9 Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK upon the Relation of the New York Central and Hudson River Railroad Company *against* ERASTUS C. KNIGHT, as Comptroller of the State of New York. } Petition for Writ.

To the supreme court of the State of New York:

The petition of the New York Central and Hudson River Railroad Company respectfully shows:

I. This petitioner, The New York Central and Hudson River Railroad Company, is a domestic railroad corporation, having but one kind of capital stock, organized and existing under the laws of the State of New York, for steam surface railroad purposes, and is engaged in operating certain railroads owned or leased in the State of New York and certain railroads leased in other States, and was such railroad corporation during the year ending October 31, 1900.

II. The defendant, Erastus C. Knight, is and has been since January 1, 1901, the comptroller of the State of New York.

III. That on or before November fifteenth, 1900, this petitioner duly made a written report to the comptrolier of the State of New York, as required by subdivision 1 of section 189 of the tax law of the State of New York, being chapter 908 of the Laws of 1896 of the State of New York.

IV. That the said report showed the condition of this petitioner at the close of its business on October 31st preceding, and stated the amount of its authorized capital stock to be $115,000,000; that the amount of stock paid in up to April 1, 1900, was $100,000,000; that the amount of stock paid in on and after April 1, 1900, was $115,000,000; that the date of payment of each dividend declared by it during the year ending with said 31st day of October was as follows: January 15, April 16, July 16, October 15, 1900; that the rate per centum of each of the said dividends was five per centum; that such dividends amounted to less than six per centum on the par value of the capital stock of this petitioner; that the entire amount of the capital of such corporation, this petitioner, was $338,897,656.69; and that the capital employed by such corporation, this petitioner, in this State during the year ending said October 31, 1900, was $204,587,574.76; and that the capital employed by such corporation, this petitioner, outside of the State of New York, during such year was $134,310,081.93; that is, the proportion or percentage of capital employed by it within this State was sixty and thirty-seven one-hundredths (60 37-100) per cent. of the entire amount of its capital, and the proportion or percentage of capital employed by it outside of this State was thirty-nine and sixty-three one hundredths (39 63-100) per cent. of the entire amount of its

capital; and that therefore, from November 1, 1899, to March 31, 1900, both inclusive, $60,370,000 was such portion of the capital stock at par of such corporation, this petitioner, as the amount
11 of capital employed within this State bears to the entire capital of the corporation; and that from April 1, 1900, to October 31, 1900, both inclusive, $69,425,500 was such portion of the capital stock at par of such corporation, this petitioner, as the amount of capital employed within this State bore to the entire capital of the corporation.

V. That subsequent to the said fifteenth day of November, 1900, the said comptroller audited and stated the account for taxes to be paid by this petitioner under section 182 of the tax law, and sent notice thereof to this petitioner.

VI. That the account so audited and stated was in the words and figures following, to wit:

"COMPTROLLER'S OFFICE, ALBANY, N. Y.

The N. Y. Central & H. R. R. R. Co., Grand Central Station, N. Y. C.

G. S. Prince in Account with the State of New York, Dr.

For tax on franchise or business, based on value of capital stock employed in New York State, per chapter 908, Laws of 1896, and acts amendatory thereof, for the year ending October 31, 1900, as per report filed.. Appraised value of capital stock, $106,000,000, tax 1½ mills..... $159,000.00

(Return this bill to the comptroller, with draft or check payable to State treasurer.)

The tax specified is due and payable January 15th, 1901. Interest attaches after that date."

VII. That on or about the 30th day of January, 1901, and within one year from the time that the said account had been audited and stated, and notice thereof sent to this petitioner, this peti-
12 tioner applied to the said comptroller to revise and readjust the said account and to have said account resettled by striking therefrom, or by crediting to the account of this petitioner, the sum of $60,521 46; that the said application was made by written petition, duly verified on or about the 30th day of January, 1901, and entitled "In the matter of the application of the New York Central and Hudson River Railroad Company for a revision and readjustment of the account heretofore audited and stated by the comptroller of the State of New York for taxes under section 182 of the tax law, for the year ending October 31st, 1900;" that upon such application said comptroller, on or about the 5th day of April, 1901, granted a rehearing, and fixed the first day of May, 1901, as the day upon which the petitioner might be heard upon such application; that said hearing was duly adjourned to the 15th day of

July, 1901; that on the said 15th day of July, 1901, this petitioner duly appeared by its counsel before the Honorable Willis E. Merriman, the deputy comptroller, representing the said comptroller, and gave testimony in support of the said application; that upon said hearing it appeared from the revised and corrected figures that of the said sum of $338,897,656.69, the entire amount of the capital of said corporation, this petitioner, as aforesaid, $205,029,380.45 was capital employed by it within this State during such year, and $133,868,276.24 was capital employed by it outside of this State during such year; that is, the proportion or percentage of capital employed by it in this State was sixty and fifty one-hundredths (60 50/100) per cent. of the entire amount of its capital, and the proportion or percentage of capital employed by it outside of this State was thirty-
13 nine and fifty one-hundredths (39 50/100) per cent. of the entire amount of its capital; and that therefore from November 1, 1899, to March 31, 1900, both inclusive, $60,500,000 was such portion of the capital stock at par of such corporation, this petitioner, as the amount of capital employed within this State bore to the entire capital of said corporation; and that from April 1, 1900, to October 31, 1900, both inclusive, $69,575,000 was such portion of the capital stock at par of such corporation, this petitioner, as the amount of capital employed within this State bore to the entire capital of the corporation; that thereafter the said comptroller made his determination, and sent written notice of his determination upon said application to the applicant, this petitioner, the said determination being as follows:

"STATE OF NEW YORK:

COMPTROLLER'S OFFICE,
ALBANY, Sept. 13, 1901.

In the Matter of the Application of NEW YORK CENTRAL & H. R. R. R. COMPANY for a Revision and Resettlement of Taxes Assessed Against it under the Provisions of Chap. 908, Laws of N. Y. 1896, and the Several Acts Amendatory Thereof.

An application having been made by the above-named New York Central & Hudson River R. R. Company for a revision and
14 resettlement of the taxes assessed and determined against it by the comptroller of the State of New York for the one year ending Oct. 31, 1900, and the said comptroller having heard proofs offered on behalf of the said New York Central & Hudson River R. R. Company in support of said application, and after due consideration thereof, the comptroller does determine that the assessment heretofore made against the said New York Central & Hudson River R. R. Co., does not include taxes which could not have been lawfully demanded, and therefore declines to make any revision or readjustment of the same.

THEO. P. GILMAN,
Deputy Comptroller."

That the said petitioner then insisted, and ever since has insisted and now insists, that the said tax of $159,000, upon the said $106,000,000 of such capital stock, was erroneously and unlawfully assessed or imposed, and payment thereof could not and can not be lawfully demanded, and that the average portion of the capital stock at par of such corporation, this petitioner, throughout the said year, which bore the same relation to the entire capital stock at par as the amount of capital employed within this State bore to the entire capital of the corporation, was $66,094,657.53; and that upon said sum only could such taxes be levied or imposed at the rate of one and one-half mills; and that the total tax which could be lawfully assessed or imposed on this petitioner under section 182 of the tax law for said year ending October 31, 1900, was $99,141.99, and that the said account should be re-settled by striking therefrom or by crediting to the account of said petitioner the sum of $59,858.01.

15 VIII. That heretofore this petitioner duly deposited with the treasurer of the State of New York the full amount of the taxes, percentage, interest and other charges audited and stated in the said account, and duly filed an undertaking with the said comptroller in an amount and with sureties approved by a justice of the supreme court of the State of New York, to the effect that if the said writ is dismissed, or the said determination is confirmed, this petitioner will pay any and all charges and costs which may accrue against it in the prosecution of the writ, including costs of all appeals, a copy of such undertaking being hereto annexed, and marked "Exhibit A."

IX. That your petitioner is aggrieved by the said determination of the said comptroller. That no previous application for this writ has been made to any court or judge.

Wherefore, your petitioner, desiring to review both upon the law and the facts said determination of the said comptroller, upon such application made to him by your petitioner for a revision and resettlement of the said account as hereinabove set forth, prays that a writ of certiorari may issue out of the supreme court of the State of New York, directed to the said comptroller of the State of New York, commanding the said comptroller to certify and return at the office of the clerk of Albany county all and singular the evidence before him on such application, and all the papers and proofs upon the original statement of such account, and all the proceedings thereon and all his decisions and actions in the premises, with all the evidence, documents, reports, records and papers relating thereto in his possession or under his control, submitted to or considered by him, concerning the said account and the grounds for his refusal

16 to revise and readjust the same, to the end that his said decisions and determinations may be reviewed and the said

original and resettled account corrected and restated, and that this petitioner have such other and further relief as may be proper.

Dated New York, November 6, 1901.

THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
By W. H. NEWMAN, President.

IRA A. PLACE,
Attorney for Petitioner, Grand Central Station,
Borough of Manhattan, N. Y. City, N. Y.

STATE OF NEW YORK, } ss.:
County of New York, }

Edward L. Rossiter, being duly sworn, says: That he is an officer of The New York Central and Hudson River Railroad Company, the petitioner above named, to wit: the assistant treasurer thereof; that the foregoing petition is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

EDWARD L. ROSSITER.

Sworn to before me this 6th day of November, 1901.
ALBERT B. QUENEER,
Notary Public, No. 4, N. Y. County.

17 Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK upon the Relation of the New York Central and Hudson River Railroad Company
against
ERASTUS C. KNIGHT, as Comptroller of the State of New York.

Whereas, the above named, The New York Central and Hudson River Railroad Company, heretofore applied to the comptroller of the State of New York to revise and readjust the account heretofore audited and stated by the said comptroller, imposing an annual tax upon the said The New York Central and Hudson River Railroad Company, for the year ending October 31st, 1900, under section 182 of the tax law, and to have the said account restated by striking therefrom, or by crediting to the account of the said railroad company, the sum of sixty thousand five hundred and twenty-one and 46/100 ($60,521.46) dollars, and the said comptroller having thereafter, a hearing having been made upon the said application, made his determination, declining to make any revision or readjustment of the said account, and

Whereas, the said The New York Central and Hudson River Railroad Company is dissatisfied and aggrieved by the said determination and intends to review the same by writ of certiorari,
18 and desires to file an undertaking with the said comptroller, as required by section 197 of the tax law.

Now, therefore, the National Surety Company, a corporation duly authorized by the laws of the State of New York to execute surety bonds, having an office and principal place of business at No. 346 Broadway, borough of Manhattan, city of New York, New York, does hereby undertake that if the said writ of certiorari, which may be granted upon the application of the said The New York Central and Hudson River Railroad Company, to review the said determination, be dismissed, or the determination of the comptroller be confirmed, the said The New York Central and Hudson River Railroad Company will pay all costs and charges which may accrue against it in the prosecution of the said writ, including the cost of all appeals, not exceeding the sum of five hundred ($500) dollars.

Dated, New York, October 26th, 1901.

NATIONAL SURETY COMPANY,
By ROBERT M. NUGENT,
Res. Vice-President.

Attest:
[L. S.] RICHARD J. MORIARTY,
Res. Ass't Secretary.

19 STATE OF NEW YORK, } ss.:
County of New York, }

On this 26th day of October, 1901, before me personally appeared Robert M. Nugent, res. vice-president of the National Surety Company, with whom I am personally acquainted, who, being by me duly sworn, said that he resides in the county of New York; that he is the res. vice-president of the National Surety Company, the corporation described in and which executed the within instrument; that he knows the corporate seal of said company; that the seal affixed to the within instrument is such corporate seal; that it was affixed by order of the board of directors of said company, and that he signed said instrument as res. vice-president of said company by like authority; and that the liabilities of said company do not exceed its assets, as ascertained in the manner provided in section 3, chapter 720 of New York Session Laws of 1893. And the said Robert M. Nugent further said that he is acquainted with Richard J. Moriarty, and knows him to be the res. ass't secretary of said company; that the signature of Richard J. Moriarty, subscribed to the said instrument is in the genuine handwriting of the said Richard J. Moriarty, and was thereto subscribed by the like order of the said board of directors and in the presence of him, the said Robert M. Nugent, res. vice-president.

E. A. VIBBARD,
[L. S.] Commissioner of Deeds, New York City.

20 Copy of By-Law.

Be it remembered, that at a regular meeting of the board of directors of the National Surety Company, duly called and held on the 6th day of February, 1900, a quorum being present, the following by-law was adopted:

"Article XIII. SEC. 1. *Signatures Required.*—All bonds, recogni- "zances, contracts of indemnity and other writings obligatory in the "nature thereof, shall be signed by the president, the vice-president, "the second vice-president, a resident vice-president, or an attorney "in fact, and, except when signed by an attorney in fact, shall have "the seal of the company affixed thereto, duly attested by the secre- "tary, an assistant secretary or a resident assistant secretary. The "vice-president, second vice-president and resident vice-presidents "shall each have authority to sign such instruments whether the "president be absent or incapacitated or not; and the assistant sec- "retaries and resident assistant secretaries shall each have authority "to seal and attest such instruments, whether the secretary be absent "or incapacitated or not. All such instruments executed as herein "provided shall be as binding upon the company as if the same were "signed by the president, duly sealed and attested by the secretary."

STATE OF NEW YORK, County of New York, } *ss.:*

I, Richard J. Moriarty, res. ass't secretary of the National Surety Company, have compared the foregoing copy of by-law with the original thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original by-law.

Given under my hand and seal of the company, in the city of New York, county of New York, this 26th day of October, 1901.

[L. S.] RICHARD J. MORIARTY,
Res. Ass't Secretary.

21 Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK upon the Relation of The New York Central and Hudson River Railroad Company, Relator,

against

ERASTUS C. KNIGHT, as Comptroller of the State of New York, Defendant.

The comptroller of the State of New York hereby makes return to the writ of certiorari issued herein November 16th, 1901, as follows:

First. He admits the allegations contained in paragraphs I., II., III., V., VI. and VIII. of the petition herein.

Second. He also admits that on or about the 30th day of January, 1901, the relator applied for a revision and readjustment of the account stated against it by said comptroller, and that such application was granted and a hearing thereon had on or about July 15th, 1901.

He also admits that thereafter the comptroller made his decision as stated in paragraph VII. of the petition herein.

22 Third. Making further return to said writ, the comptroller does not admit any of the allegations of the petition herein, except those herein expressly admitted or shown by this return.

Fourth. He further returns that said account and determination are in all things legally and properly stated and made, and that the relator is not aggrieved thereby.

Fifth. Annexed hereto and made a part hereof are the papers and proceedings before the comptroller in stating such account and making such determination, other than those set out in the petition herein as follows:

Exhibit "A." Application for revision and readjustment.

Exhibit "B." Proceedings and minutes on application for revision and readjustment.

In witness whereof, I have hereunto set my hand and seal this 19th day of February, 1902.

[L. S.] NATHAN L. MILLER,
Comptroller.

23 EXHIBIT "A."

In the Matter of the Application of THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY for a Revision and Readjustment of the Account Heretofore Audited and Stated by the Comptroller of the State of New York for Taxes under Section 182 of the Tax Law.

To the Honorable Erastus C. Knight, comptroller of the State of New York:

The application of the New York Central and Hudson River Railroad Company respectfully shows:

1. That it is a railroad corporation duly organized and existing under the laws of the State of New York, engaged in operating certain railroads owned or leased in the State of New York and certain railroads leased in other States, and that a part of its capital is, and during the year ending October 31st, 1900, was, employed within this State and that a part of such capital is not, and was not in or during said year employed in the State of New York.

2. That on or before the 15th day of November, in the year
24 1900, it duly made a written report to the comptroller of the State of New York as required by subdivision 1 of section 189

of the tax law; such report being in a form prescribed by the said comptroller of the State of New York; and that such report showed the condition of the said company at the close of its business on October 31st, preceding, and that in said report was stated the amount of its authorized capital stock, the amount of stock, paid in, the date and rate per centum of each dividend declared by it in each quarter of the year ending on the said October 31, 1900; that such dividends amounted to less than six per centum on the par value of the capital stock of the said company; the entire amount of the capital of the said corporation and the capital employed by it in this State during such year.

3. That said report showed that from and after November 1st, 1899, to and until March 31, 1900, the amount of the authorized capital stock of this company was $100,000,000, all of which was paid in and issued; and that from and after April 1st, 1900, to and until October 31st, 1900, the amount of the authorized capital stock of this company was $115,000,000, all of which was paid in and issued; and that during the same year -ing October 31st, 1900, the entire capital of this company was $338,897,656.69; and that the amount of such capital employed within this State during the said year ending October 31st, 1900, was $204,587,574.76; and that the balance of such capital, $134,310,081.93, was employed outside of the State of New York during the said year ending October 31st, 1900; and that the portion of the capital stock of the said company which bore the same relation to the entire capital stock of the said company as the amount of capital employed within this State bore to the entire capital of the said company was, from and after November 1st, 1899, to and until March 31st, 1900, $60,370,000, and from and after April 1st, 1900, to and until October 31st, 1900, $69,425,500.

4. That subsequent to the said 15th day of November, 1900, the said comptroller audited and stated the account for taxes to be paid and sent notice thereof to the said company.

5. That the said account so audited and stated imposed a tax of $159,000, purporting to be a tax of one and one-half mills upon $106,000,000.

6. That the said $106,000,000, the portion of the capital stock at par of the said company upon which said tax was based or imposed as aforesaid, was greater than the portion of such capital stock at par as the capital employed within this State bears to the entire capital of the corporation by $45,630,000 of such capital stock at par during the first five months of the said year, and by $36,574,500 during the last seven months of said year, or an average of $40,347,625 for the said year ending October 31st, 1900; and that the said tax so imposed upon said $40,347,625, amounts to the sum of $60,521.44; that the said company has insisted, and now insists, that the said tax of $60,521.44 upon the said sum of $40,347,625 was erroneously and unlawfully assessed and imposed, and payment thereof could

not and cannot be lawfully demanded, and that said tax is wholly without warrant or authority of either law or fact.

Wherefore, the said company makes this application and prays that the said account so audited and stated be revised and readjusted, and that the said account be resettled by striking therefrom or by crediting to the amount of the said company the said sum of
26 $60,521.44; and that the said company have such other and further relief as may be proper.

THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
By G. S. PRINCE, Treasurer.

IRA A. PLACE,
Attorney for the Applicant, Grand Central Station,
Borough of Manhattan, N. Y. City, N. Y.

STATE OF NEW YORK,
County of New York, } ss:

George S. Prince, being duly sworn, says: that he is an officer of The New York Central and Hudson River Railroad Company, the applicant above named, to wit: the treasurer thereof; that the foregoing application is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to — true.

G. S. PRINCE.

Subscribed and sworn to before me this 30th day of January, 1901.

JOHN A. MATTISON,
Notary Public, N. Y. County, N. Y.

27 EXHIBIT "B."

STATE OF NEW YORK:

Comptroller's Office.

In the Matter of the Application of THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY for a Revision and Readjustment of the Account Heretofore Audited and Stated by the Comptroller of the State of New York for Taxes under Section One Hundred and Eighty-two of the Tax Law for the Year Ending October Thirty-first, Nineteen Hundred.

Rehearing held at the office of the State comptroller, July 15th, 1901, before Willis E. Merriman, second deputy comptroller.

Appearances.

Frederick H. Meeder appeared for the company.
Thomas Emery, as counsel.

Mr. MEEDER, being duly sworn, testified as follows:

By Mr. EMERY:

Q. State your name, Mr. Meeder?
A. Frederick H. Meeder.
Q. Where do you reside?
A. South Orange, New Jersey.

28 Q. Are you in the employ of the New York Central and Hudson River Railroad Company?
A. Yes, sir.
Q. In what department and in what capacity?
A. Comptroller's office and in capacity of general bookkeeper.
Q. Does that office have charge of the books and accounts such as enter into the making up of return of capital employed?
A. Yes, sir.
Q. Did you make up or assist in making up of the company's report to the State comptroller of its capital employed for the year ending October thirty-first, nineteen hundred?
A. Yes, sir.
Q. Have you recently had occasion to go over those figures again?
A. Yes, sir.
Q. With reference to attending here and testifying?
A. Yes, sir.

Mr. EMERY: I offer in evidence recapitulation, distribution of assets, October 31, 1900.
Same received and marked Ex. A for identification.

Q. Examine the paper marked Exhibit A for identification, the heading of which is "Recapitulation, distribution of assets October 31, 1900," and say whether that is the statement that you made up as the result of the figuring last mentioned?

A. Yes, sir, it is.

Q. And what have you to say as to the correctness of these figures, as you have them upon this statement?

A. I believe those to be correct.

Q. The first figures in the column headed "Outside New York State," to wit, $15,230,186.06, state, if you please, what that item is made up of?

A. That is made up of an item of $772,178.81, representing proportion of the total valuation of passenger cars which is employed outside of the State, this proportion being based upon a per-
29 centage furnished by the car accountant; in other words, upon a wheelage basis; also an item of $14,458,007.25, representing a valuation of freight cars employed outside of the State, a proportion of the total being based upon a percentage furnished by the car accountant in a similar manner to that for passenger cars.

Q. Directing your attention to the second item in the same column, namely, $117,401,219.01, state, if you please, the items going to make up that amount?

A. That consists of stocks of other companies in which the capital of the New York Central and Hudson River is employed outside of New York State as follows——

Mr. MERRILL: I am going to object to that answer, simply as to the form in which he has answered it, that is all; he states a conclusion there, that is, there isn't capital; I haven't any objection to his stating facts, but I do object to his stating conclusion; that is, if he wants to say that so much money of New York Central and Hudson River Railroad Company, or anything of that kind, is there, I have no objection, but when he states conclusion as to what constitutes capital, we will have to have him qualify himself on that if he is going to do it.

By Mr. EMERY: At any rate, when the entire statement is before you, it will show for itself what it is, anyhow.

Mr. MERRILL: I would rather have him state it some other way—it is a conclusion on his part.

Mr. EMERY: Well, I should feel obliged to offer it in that form.

Mr. MERRILL: He can state what the facts are, Mr. Emery.

30 Mr. EMERY: That is what I suppose he is to proceed to do.

Mr. MERRILL: I will let him proceed and you can qualify him if you do it in that way.

THE PEOPLE OF THE STATE OF NEW YORK upon the Relation of the New York Central and Hudson River Railroad Company
against
ERASTUS C. KNIGHT, as Comptroller of the State of New York.

Order for Issuance of Writ of Certiorari.

On reading and filing the petition verified and dated the sixth day of November, 1901, of the New York Central and Hudson River Railroad Company, and upon the undertaking heretofore filed by the said railroad company, pursuant to section 197 of the tax law, and upon the notice of this application duly served on the comptroller of the State of New York, and after hearing Harris & Rudd, Esqrs., of counsel for the petitioner, and Robert E. Steele, Esq., deputy attorney-general for the State comptroller, and on motion of Ira A. Place, Esq., attorney for the petitioner, it is

5 Ordered, that a writ of certiorari do issue from and out of this court pursuant to the prayer of the petitioner, directed to Erastus C. Knight, as comptroller of the State of New York, to review the decision and determination of the said comptroller mentioned and described in the petition, and the question involving the merits therein mentioned, both upon the law and the facts, which writ shall be returnable within twenty days after service thereof upon the said comptroller, at the office of the clerk of Albany county.

Enter.

D. CADY HERRICK, Justice.

6 Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK upon the Relation of the New York Central and Hudson River Railroad Company
against
ERASTUS C. KNIGHT, as Comptroller of the State of New York.

Writ of Certiorari.

Whereas, we have been informed by the verified petition of the New York Central and Hudson River Railroad Company, dated and verified the sixth day of November, 1901, that certain proceedings have been had before the comptroller of the State of New York in a certain matter entitled "In the matter of the application of the New York Central and Hudson River Railroad Company for a revision and readjustment of the account heretofore audited and stated by the comptroller of the State of New York for taxes under section 182 of the tax law, for the year ending October 31st, 1900," upon the application of the said railroad company to revise

and readjust an account theretofore audited and stated by the said comptroller of the State of New York for taxes to be paid by the said The New York Central and Hudson River Railroad Company under section 182 of the tax law, the petition upon which the said
7 application was made being verified January 30, 1901, and a hearing upon such application having been had on the 15th day of July, 1901, and the said comptroller having thereafter made his determination and sent written notice of his determination upon such application to the applicant, the pet[illegible] herein, denying the application and declining to make any revision or readjustment of the said account, and the said The New York Central and Hudson River Railroad Company having now made application to this court for a writ of certiorari to review the said decision and determination of the said comptroller;

And we being willing for certain purposes to be certified of such proceedings, if any such were had, do hereby command and strictly enjoin Erastus C. Knight, as comptroller of the State of New York, that he certify and return all and singular the evidence before him on such application, and all the papers and proofs upon the original statement of such account and all proceedings thereon, and all his decisions and actions in the premises, with all the evidence, documents, reports, records and papers relating thereto in his possession, or under his control, submitted to or considered by him, concerning the said account and the grounds of his refusal to revise and readjust the same, as prayed for in the petition, within twenty days after the service upon him of this writ, at the office of the clerk of Albany county, under his proper hand, pursuant to the provisions of the tax law and the provisions of title II., of chapter 16 of the Code of Civil Procedure, so that our supreme court may further cause to be done thereon what of right and according to law ought to be done, and let the defendant have then and there this writ.

Witness the Hon. D. Cady Herrick, justice of our honorable
8 court, at the court house in the city of Albany, N. Y., this 16th day November, 1901.

[SEAL.] P. E. McCABE, Clerk.

IRA A. PLACE,
Attorney for the Relator, Grand Central Station,
Borough of Manhattan, N. Y. city, N. Y.

The above writ is hereby allowed this 16th day of November, 1901.

D. CADY HERRICK,
Justice Supreme Court.

that a separate company in which the New York Central and Hudson River Railroad Company is a stockholder?

A. The New York Central and Hudson River Railroad Company operates the D. A. V. & P. R. R. Company under the terms of a lease, and at the same time is also a stockholder in that company.

Q. Now, does the New York Central and Hudson River Railroad Company operate the Lake Shore and Michigan Southern Railroad Company?

A. No, sir.

Q. Does it operate the Michigan Central Railroad Company?

A. No, sir.

Q. Does it operate the Cleveland, Cincinnati, Chicago and St. Louis railway?

A. No, sir.

Q. Or the Lake Erie and Western railroad?

A. No, sir.

Q. Or the Chesapeake and Ohio railroad?

A. No, sir.

Q. Or the Pennsylvania and Western railway?

A. No, sir

Q. Does it operate the Merchants' Despatch Transportation Company?

A. No, sir.

Q. Why did you change your figures in relation to the assets within and without the State, Mr. Meeder?

34 A. Because there were certain figures in regard to which there might be some doubt, some question, and upon advice of counsel it seemed better to give the State the benefit of the doubt rather than to argue further upon them.

Q. In arriving at the value of road and equipment outside of the State of New York what road, what equipment, enters into that—all these various lines which you name, the Merchants' Despatch Transportation—a certain amount?

A. No, sir, only the equipment which is owned by the New York Central and Hudson River Railroad Company.

Q. Then that simply consists of cars?

A. Yes, sir, that is all.

Q. Now, in these stocks of other companies you have included investments in the Lake Shore and Michigan Southern, have you not?

A. Yes, sir.

Q. And the Michigan Central?

A. Yes, sir.

Q. The Merchants' Despatch Transportation Company?

A. Yes, sir.

Q. The Pennsylvania and Western railroad?

A. Yes, sir.

Q. The Pittsburgh and Eastern?

A. Yes, sir.

Q. The Cleveland, Cincinnati, Chicago and St. Louis?

A. Yes, sir.
Q. The Lake Erie and Western?
A. Yes, sir.
Q. And the Chesapeake and Ohio?
A. Yes, sir.
Q. How many of these stocks were bought since the last bond issue of the New York Central and Hudson River Railroad Company?

Objected to by Mr. Emery.
Objection overruled.

A. Well, Mr. Merrill, perhaps I had better answer that question in this way: We have been issuing bonds continually for the last two or three years in connection with refunding, and the only other bonds which I can recollect having been issued have been for construction purposes.

35 Q. Mr. Meeder, what is your recollection with relation to the purchase of stocks of the Lake Shore and Michigan Southern railroad and the Michigan Central railroad, were those stocks purchased by bonds issued?

Objected to by Mr. Emery.
Objection overruled.

A. The Lake Shore and Michigan Southern and Michigan Central?
Q. Yes?
A. Yes, sir, they were.
Q. With what funds—that is, funds from what source was the stock of the Chesapeake and Ohio Railroad Company purchased?

Objected to by Mr. Emery. Objection overruled.

A. That was purchased from—purchased with cash belonging to the company.
Q. Where did the cash come from?

Objected to by Mr. Emery. Objection overruled.

Q. In other words, was it moneys received from bond issues or was it moneys the result of the operation of the railroad business of the New York Central and Hudson River Railroad Company, or was it moneys received from the sale of the stock of the New York Central and Hudson River Railroad Company?

Objected to by Mr. Emery. Objection overruled.

A. To the best of my recollection, it was from—this stock was purchased from moneys received from none of the above sources.
Q. From what source was it received?

Objected to by Mr. Emery. Objection overruled.

A. To the best of my recollection, the money for the purchase of

the Chesapeake and Ohio Railway stock was obtained by means of a cash loan.

36 Q. What security did you give for that, Mr. Meeder?

A. I am unable to say.

Q. The books of the company wouldn't show?

A. No, sir.

Mr. MERRILL: The comptroller will ask you to find out what security was given for this loan.

Q. Now for what was, or with what was, the stock of the Lake Erie and Western Railroad Company purchased?

Objected to by Mr. Emery. Objection overruled.

A. To the best of my recollection, the money was obtained by the same means as for the purchase of the Chesapeake and Ohio Railroad stock.

Mr. MERRILL: Will you please furnish the comptroller with some information that has been asked in regard to funds with which Chesapeake and Ohio Railway stock was made?

Q. Is this also true of the stock of the Cleveland, Cincinnati, Chicago and St. Louis railroad?

Objected to by Mr. Emery. Objection overruled.

A. Yes, sir.

Mr. MERRILL: The comptroller would also like the information in regard to that.

Q. Now, what about Pennsylvania and Western Railroad Company—was that stock purchased in same way?

Objected to by Mr. Emery. Objection overruled.

A. No, sir; that was purchased from the current funds of the company.

Q. During the year ending October 31st, 1900, what stocks of foreign corporations were deposited as collateral security in the State of New York?

Objected to by Mr. Emery. Objection overruled.

37 A. So far as I know, the stock of the Lake Shore and Michigan Southern Railway Company and of the Michigan Central Railroad Company, as shown on the balance sheet of the New York Central and Hudson River Company on October 31st, 1900—in amount as shown on the balance sheet.

Q. Mr. Meeder, were these stocks on deposit there for collateral security during the entire year ending October 31st, 1900.

Objected to by Mr. Emery. Objection overruled.

A. I believe that the amount of Lake Shore and Michigan South-

ern Railway stock was on deposit during the entire year ending October 31st, 1900, but the amount of Michigan Central stock on hand October 31st, 1899, was slightly less than the amount on hand on October 31st, 1900.

Q. Well, it was substantially the same amount during the year?

A. Yes, sir.

Q. Now, do you know whether there were any other stocks of foreign corporations placed as collateral security within the State during that year?

A. No, sir; I don't know.

Q. Could you determine?

A. I could not; no, sir.

Q. Could anybody else determine—that is, anybody connected with the company?

A. I don't know.

Q. Mr. Meeder, would the books of the New York Central and Hudson River Railroad Company show where these stocks were deposited as collateral security?

A. I believe that there are records which would show.

Q. Now, Mr. Meeder, the comptroller would like for you to furnish him with a statement of the stocks of foreign corporations deposited in the State of New York as collateral security during the year ending October 31st, 1900, such a statement being itemized showing the amount of stocks and the names of the railroad companies by which such stocks were issued.

38

By Mr. EMERY: I desire to object in this way—of course, to say that Mr. Meeder shall undertake to furnish the evidence, but we object to its being received and considered as pertinent evidence in the case.

By Mr. MERRILL: You may consider this to be a demand on the part of the comptroller.

Q. Now, Mr. Meeder, is the Merchants Despatch Transportation Company a domestic corporation?

A. I think it is.

Q. Do you know?

A. I am not positive.

Mr. MERRILL: The comptroller will put in evidence a copy of the certificate of incorporation of the Merchants' Despatch Transportation Company, showing that the same is a domestic corporation, organized under the laws of the State of New York.

Same received and marked Ex. B.

Q. Now, Mr. Meeder, the item of cash, cash assets outside of New York State amounting to $965,217.97 as stated by you, consists of what?

A. A proportionate amount of dividend on Lake Shore and Michigan Southern Railway stock, all dividend on Michigan Central Railroad stock, the Pine Creek Railway stock, a proportionate

amount of dividend on Merchants' Despatch Transportation Company's stock, a proportionate amount of dividend on D. A. V. & P. R. R. stock, all of the above being anticipated in advance of payment.

Q. What has the New York Central and Hudson River Railroad Company to show for this amount of interest due it, or of dividend due it?

39 A. Do you mean what reason have they for anticipating such dividends, and believing that they will be paid?

Q. I mean, what have they to show that they have any such assets as $965,217.97 due them as dividends upon the stock of foreign corporations or domestic corporations?

A. In the case of the Lake Shore and Michigan Southern railway that asset is based upon——

Q. I am not asking you what it is based upon, I am asking what the New York Central and Hudson River Railroad Company has to show that it has got such an asset as that?

A. The ownership of the stock itself.

Q. Is that the only thing it has?

A. And in the case——

Q. Is that the only thing it has, the ownership of the stock?

A. No, sir.

Q. What else did it have?

A. In the case of the Pine Creek railway——

Q. I mean in relation to that Lake Shore and Michigan Southern?

A. You are referring to Lake Shore and Michigan Southern alone now?

Q. I say, is it the only evidence it has?

A. I thought you were speaking of this whole group.

Q. I say, is that the only evidence the railroad company has, the ownership of assets, simply the ownership in the share stock?

A. It has, besides the stock, only the intangible asset of regularity of dividend.

Q. But these dividends have not been declared, have they?

Mr. EMERY: That is, you mean they hadn't on the thirty-first of October?

Mr. MERRILL: Yes.

A. No, sir.

By Mr. MERRILL:

Q. Then what property right had the New York Central
40 and Hudson River Railroad Company to any of these dividends—the amount of those dividends was still the property of these several corporations, was it not?

Objected to by Mr. Emery as calling for a conclusion.

Objection overruled.

Q. I am asking for fact, he can say yes or no as he chooses?
A. Its right as being the holder of nearly all the capital stock of that company.
Q. Is that your answer?
A. That is my answer.
Q. Did the New York Central and Hudson River Railroad Company, on October thirty-first, have any book account on its records in the city or State of New York showing any such balance as that to be due or amount as that to be due it from these several corporations?
A. Yes, sir, it did.
Q. Did it have any other record anywhere else than that which it carried on its books in the office in the city of New York?
A. No, sir, not that I know of.
Q. Does the New York Central keep any books anywhere else, general books?
A. No, sir.
Q. Now, Mr. Meeder, do the books of account of the New York Central and Hudson River Railroad Company show any amounts due from any of these companies in which you have ownership amounting to $171,653.20?
A. Yes, sir, in the case of the D. A. V. & P. R. R., in the item of cash, cash assets in New York State, there is included a charge against the D. A. V. & P. R. R. for net earnings from operation.
Q. Amounting to how much?
A. Amounting to about one hundred thousand dollars, I believe; but these net earnings are before the payment of first charges of any kind by the New York Central and Hudson River railroad.
Q. Mr. Meeder, if the New York Central and Hudson River
41 Railroad Company had expended upon the properties of these other companies this amount of $171,653.20 and expects no recompense from it or payment, why should the New York Central and Hudson River Railroad Company carry it as an asset when they have absolutely no title to it?
A. Because to that extent it represents an interest in the property.
Q. Has it an interest that could be removed?
A. I don't know; you mean removed by New York Central?
Q. Yes, and the records of the New York Central and Hudson River Railroad Company do not show any of these companies to be owing to the company for these moneys expended on their property?
A. No, sir, it shows them simply as an investment.
Q. Then your answer is, no?
A. Yes, that is my answer.
Q. Now, this item of fuel and supplies, what is that?
A. That represents coal and supplies in shop, storehouses and miscellaneous supplies on the lines of our road in New Jersey and Pennsylvania.
Q. What road?

A. The West Shore railroad in New Jersey, the Beach Creek railroad in Pennsylvania, the Fall Brook railroad in Pennsylvania.

Q. Now, what is your theory in determining the equipment of the New York Central located outside of the State. When you take a mileage basis, for instance, the property investment in a car leaving the New York Central depot and running to San Francisco would be no more than it would if it simply ran to Buffalo, would it?

A. Well, the actual amount of ownership by the New York Central in that car would be unchanged.

Q. Actual amount of investment you mean would be unchanged?

A. In the car, yes.

42 Q. How did you determine investment upon this wheelage basis—mileage basis?

A. The car accountant has records showing the equipment of the New York Central and Hudson River Railroad Company in use on its own and on foreign lines, From those records, which I believe are compiled monthly, he obtains a yearly average which is furnished to the comptroller's office of the railroad and is used in connection with the report to the State.

Q. Then he simply takes such a portion of the amount invested in all the cars of the New York Central and Hudson River Railroad Company as the number of miles over which cars pass in the State of New York is to the whole number of miles over which all the cars pass, is that it?

A. No, sir, not necessarily; for instance, in the case of freight cars, there may be a great many on lines which are entirely out of New York State, and may remain on such lines for a length of time without making any mileage within the State of New York.

Q. Now, Mr. Meeder, the New York Central and Hudson River Railroad Company has the use of the cars of other railroad companies, does it not?

A. Yes, sir.

Q. And approximately, what percentage does it have of other companies' cars compared with percentage of its own cars outside of State, amount of cars outside of State?

Objected to by Mr. Emery.

Objection overruled.

A. I cannot tell.

Q. There are more New York Central cars outside of State than New York Central has of other people's cars in the State, aren't there?

A. Yes, that is true.

Q. What equipment did the New York Central Railroad

43 Company buy between April first, nineteen hundred and October thirty-first, nineteen hundred?

A. I haven't the data here that would show that.

Q. Well, what was this fifteen millions of new stock used for?

A. For the purchase of new equipment.

Q. Do you know at what average price the stock of New York

Central and Hudson River Railroad Company sold during year ending October thirty-first, nineteen hundred?

Objected to by Mr. Emery.
Objection overruled.

A. The average based upon the highest price during the year and the lowest price during the year would be one hundred and thirty.

Q. What were the total assets of the New York Central and Hudson River Railroad Company during the year ending October thirty-first, nineteen hundred?

A. $338,897,656.69.

Q. What were the liabilities exclusive of the capital stock?

A. $210,258,536.63.

Q. In reaching that conclusion, Mr. Meeder, what amount did you take as capital stock of corporation?

A. One hundred and fifteen million dollars.

Q. In arriving at a division of the capital stock of the Lake Shore and Michigan Southern did you take the miles of road owned by the Lake Shore and Michigan Southern, or did you take the miles owned and leased by the Lake Shore and Michigan Southern?

A. Took the miles of road operated.

Q. And not the miles of lines owned; that is, you took operated lines, leased lines located without the State on same basis as though those lines had been owned by the Lake Shore and Michigan Southern, didn't you?

A. No, sir, we took the entire line operated, on the basis
44 that the entire line represented the mileage in which the capital of the Lake Shore road was employed.

Q. Well, what about the employment of the capital of the Lake Shore road—you don't mean to contend that the Lake Shore and Michigan Southern has as much capital invested in a mile of road owned by another corporation over which it operates as it has in a mile of road which it owns and over which it operates, do you?

A. No, sir, I don't mean that—the capital stock covers more than the main line of the road.

Q. Yet in a division of that you have taken into consideration all these leased lines without the State, haven't you?

A. Yes, sir.

Q. Mr. Meeder, I believe you have conceded that the stocks of the Lake Shore and Michigan Southern and Michigan Central were bought from bonds?

A. Yes, sir.

Q. Will you please tell the comptroller briefly what took place in order to make that purchase on the part of the New York Central Railroad Company?

Objected to by Mr. Emery.
Objection overruled.

Q. Did the New York Central and Hudson River Railroad Company mortgage its property located within the State?

Objected to by Mr. Emery.
Objection overruled.

A. I don't know.

Q. Why did the New York Central Railroad Company place these stocks as collateral security with trust companies in city of New York?

A. As security for issue of what are called the three and one-half per cent. collateral bonds.

Mr. MERRILL: Mr. Meeder, the comptroller would like a statement of the outstanding funded debt as of October 31st, 1900, of
45 the New York Central and Hudson River Railroad Company.
Same received and marked Ex. C.

Mr. MERRILL: Now, I want to show by the reports made by the New York Central and Hudson River Railroad Company for year ending October thirty-first, eighteen hundred and ninety seven and for year ending November first, eighteen hundred and ninety-five, that the New York Central and Hudson River Railroad Company had employed outside the State $8,807,876.00, consisting of average amount of rolling stock owned by this company and employed in running outside of State of New York, and investments of New York Central in shares of stock located and permanently engaged outside of State of New York for year ending October thirty-first, eighteen hundred and ninety seven and for year ending November first, eighteen hundred and ninety-five; that the entire capital stock of one hundred million dollars outstanding at that time was paid up and that but $6,436.714.00 of such capital stock was employed in State of New York for the year ending November first, eighteen hundred and ninety-five, as shown by the report, and for that purpose the comptroller offers in evidence the report of the New York Central and Hudson River Railroad Company for those years.

Mr. EMERY: Objected to on the ground that in so far as the assets of the company at that time would, upon the same basis as the company's present contention proceeds upon, differ from its present showing, such representation was by inadvertence and is not evidence of what the actual facts were during or at the end of the years in question.

Objection overruled. Same received and marked Exhibits D and E.

46 By Mr. EMERY:

Q. Mr. Meeder, referring to the item, Merchants' Despatch Transportation Company 89% $2,597,400.00, to wit: $2,311,686.00, as being outside of the State, state, if you please, how that 89% was arrived at and what it represents?

A. Represents the percentage of cars of the M. D. T. Company in

use outside of the State of New York, such percentage having been furnished from the office of that company.

Q. In answer to Mr. Merrill's question, you stated in substance a certain amount as being the amount of the entire capital of the New York Central and Hudson River Railroad Company for the year ending October thirty-first, nineteen hundred, state what the fact was as to whether the company's entire capital was increased by fifteen millions at the same time that its capital stock was increased that amount?

A. Yes, sir.

Mr. EMERY: Now, Mr. Merrill, I desire to offer in evidence the trust agreements the same as were put in evidence before.

Same received and marked Exhibits D and E.

Mr. MERRILL: I offer in evidence annual report to comptroller for year ending October thirty-first, nineteen hundred.

Same received and marked Ex. F.

47

EXHIBIT A.

Recapitulation.

Distribution of Assets October 31, 1900.

	In N. Y. State.	Outside N. Y. State.	Total.
Cost of road and equipment	$166,074,130.15	$15,230,186.06	$181,304,316.21
Lessor companies	6,660,290.98	.....	6,660,290.98
Stock of other companies	9,158,362.88	117,401,219.01	6,559,581.89
Bonds of other companies	4,080,411.52	.....	4,080,411.52
Cash and cash assets	7,891,812.31	965,217.97	8,857,030.28
Ownership in other lines, real estate, etc.	5,973,043.80	171,653.20	6,144,697.00
Fuel & supplies	3,992,485.63	100,000.00	4,092,485.63
Sinking fund	1,198,843.18	.....	1,198,843.18
	$205,029,380.45	$133,868,276.24	$338,897,656.69
	60.50%	39.50%	100%

EXHIBIT B.

Articles of Incorporation of Merchants Despatch Transportation Company.

This company was conceded to be a domestic company.

48 EXHIBIT C.

New York Central & Hudson River Railroad Company Funded Debt, October 31, 1900.

Bonds.	Outstanding.	Issued for.
First mortgage N. Y. C. & H. R. R. R., 7%	$18,481,000.00	Cannot tell.
" " " Sterling, 6%	5,859,467.97	"
Extended debt certificates, 4%	3,772,500.00	"
Debenture certificates, 1884, 5%	4,859,000.00	Reimbursement to treasury for surplus earnings used for construction purposes between 1871 and 1883, and also to refund certain Hudson River R. R. and N. Y. Central R. R. bonds.
Debenture certificates, 1889, 5%	659,000.00	Purchase Niagara Bridge and Canandaigua R. R.
Gold debentures, 1890, 4%	5,657,000.00	Completing, finishing or operating railroad.
Gold mortgage bonds, 3½%	37,080,397.42	General purposes of company, $3,019,900 balance for refunding of previous issues.
Gold bonds, "L. S. collateral," 3½%	90,578,400.00	To purchase capital stock L. S. & M. S. Ry. Company.
Gold bonds, "M. C. collateral," 3½%	18,900,825.00	To purchase capital stock of M. C. R. R. Company.
Total	$185,797,590.39	

49 EXHIBIT D.

Report of the New York Central and Hudson River Railroad Company for the year ending the first day of November, A. D. 1895, made pursuant to provisions of chap. 542, Laws of 1880, and the subsequent acts amendatory thereof.

GRAND CENTRAL STATION,
NEW YORK, November 13th, 1895.

To the comptroller of the State of New York:

Agreeable to law, as treasurer of the above company, I make the following report viz.:

1. This company began business in the State of New York in the month of November, 1869.

2. The last report made by this company to the comptroller of the State of New York under the provisions of the above act, was made for the year ending November 1st, 1894.

3. Value of real estate and of interest or interests in real property in New York State, and where situated ..... Cannot give.

4. Organized under the laws of the State of New York.

5. Date of organization of the company, November, 1869.
6. Total authorized capital of company, $100,000,000.
7. Whole number of shares of stock authorized, 1,000,000.
8. Number of shares of stock issued to June 30, 1895, 954,283; from June 30, '95, 1,000,000.
9. Par value of each share, $100.00.
10. Amount paid into the treasury of the company on each share (see answers to Nos. 8 and 9).
11. Amount of capital paid in (see answers to Nos. 8 and 9).
12. Amount of capital upon which dividends were declared (do.).
13. Date of each dividend payable January 15, April 15, July 15, October 15.
14. Amount of each dividend payable, $1,192,853.74, $954,283.00, $1,000,000.00, $1,000,000.00.
15. Rate per cent. per annum of dividends, four and one-quarter per cent.
16. The business transacted by this company in the State of New York for the year ending November 1st, 1895, was as follows: Railroad.
17. And such business was carried on at the following named place or places ..... Very numerous places.
18. Capital stock employed in New York State ..... All but $6,436,714.00.
19. If not in New York State, where and how employed ..... Property permanently invested and employed outside of New York State.
20. Highest price of sales of stock during the year aforesaid, 104⅜.
21. Lowest price of sales of stock during the year aforesaid, 92⅜.

E. V. W. ROSSITER, Treasurer.

STATE OF NEW YORK, }
County of New York, } ss.:

On this thirteenth day of November, A. D. 1895, personally appeared before me, a notary public in and for the county of New York, Edward V. W. Rossiter, treasurer of the above-named company, who being duly sworn according to law, did depose and say, that the foregoing report is just, true and correct according as the accounts stand in the books of the company, and that it includes all dividends, whether cash, stock, scrip, or of any character or description, declared by said company during the year ending on the first day of November, A. D. 1895.

E. V. W. ROSSITER, Treasurer.

Sworn and subscribed before me the day and year aforesaid.

J. P. McMAHON,
Notary Public, New York County.

A. D. A. V. & P. R. R. 48 3/14/90 6/10 of $156,912.38 equals	$83,651.96
Merchants' Despatch Transportation Company 89 per cent. of $2,597,400.00 equals	2,311,686.00
Morris Run Coal Mining Company	900,000.00
New Jersey Junction Railroad Company	100,000.00
Pine Creek Railway Company	100.00
West Shore and Ontario Terminal Railway Company	2,900.00
Jersey City and Bayonne Railroad Company	13,500.00
New Jersey Shore Line Railroad Company	31,000.00
Beech Creek Railroad Company	1,125.00
Lake Shore and Michigan Southern Railway Company 1342.32/1413.44 of $90,578,400.00 equals	86,020,770.53
Michigan Central Railroad Company	18,900,825.00
Clearfield Bituminous Coal Corporation	200.00
Pennsylvania and Western Railroad Company	10,983.61
Chest Creek Railroad Company	6,000.00
West Branch Valley Coal Company	25,000.00
Pittsburgh and Eastern Railroad Company	150,000.00
Cleveland, Cincinnati, Chicago and St. Louis Railway Company	4,307,379.52
Lake Erie and Western Railroad Company	2,897,642.60
Chesapeake & Ohio Railway Company	1,638,454.79

31 By Mr. EMERY:

Q. That makes total of?

A. $117,401,219.01.

Q. The third item in the column headed "Outside New York State," being $965,217.97, please state what enters into that item?

A. That consists of anticipated dividends on securities owned as follows:

Lake Shore and Michigan Southern Railway Company, 1342.32/1413.44 of $792,561, being three months' proportion of dividend of 7 per cent. per annum on 452,892 shares of stock, equals	$752,681.74
Michigan Central railroad, 3 months' proportion at 4 per cent. per annum of dividend on 164,355 shares of stock, equals	164,355.00
Pine Creek railway, 3 months' proportion at 3½ per cent. per annum of dividend on 19,980 shares of stock, equals	8,741.29
Merchants' Despatch Transportation Company, 89 per cent. of $38,961, being proportion of dividend of 1½ per cent. on $25,974 shares of stock, equals	34,675.20
D. A. V. & P. R. R., 48.3/90.6 of $8,937.50, being eleven months' proportion of dividend of one-half of 1½ per cent. per annum on 13,000 shares of stock, equals	4,764.69
A total of	$965,217.97

Q. Now state, if you please, what the next item is made up of, to wit, the item of $171,653.20?

A. That consists of $92,481.50, representing proportion on a
32 mileage basis of money paid on behalf of the D. A. V. & P. R. R. Company for improvements, and so forth, for which this company expects no return.

Q. By that you mean that it holds no obligation against the D. A. V. & P. R. R. Company for its refund?

A. Yes, sir, that is my meaning. $1,490.54, representing a membership in the Chicago board of trade; $65, representing a membership in the Montreal board of trade; $10, representing a membership in the Montreal corn exchange; $52,991.47, representing amount expended for drainage of land on Palisade ridge in the State of New Jersey; $24,184.23, representing amount expended for improvement of highway from Weehawken, New Jersey, to top of Palisades; $408.54, representing payments on behalf of the Pennsylvania and Western railroad, a corporation of the State of Pennsylvania, and $21.92, representing expenditures on behalf of the Chest Creek railroad, also a corporation in the State of Pennsylvania—a total of $171,653.20.

Q. And the item of $100,000, what does that consist of?

A. That represents the estimated value of this company's fuel and supplies in the State of Pennsylvania.

Q. In speaking of the company having these respective amounts of capital invested in the properties you have named outside of the State, say in what sense you have thus used the word capital?

A. The term capital I have used in the sense that it is the assets of the corporation employed in conducting its business.

Q. You may state, if you please, Mr. Meeder, what was the amount of capital stock of the company for the year ending October 31, 1900?

A. The capital stock to April 1, 1900, was one hundred million dollars.

33 Q. From April 1st to the end of the year it was how much?

A. One hundred and fifteen million dollars.

Mr. EMERY: I offer in evidence recapitulation, distribution of assets, October 31, 1900.

Same received and marked "Ex. A."

By Mr. MERRILL:

Q. Mr. Meeder, you made the statement to this effect that you used the term capital to signify assets of the New York Central and Hudson River Railroad Company employed in carrying on its business?

A. Yes, sir.

Q. Does the New York Central and Hudson River Railroad Company operate the Dunkirk, Allegheny Valley and Pittsburg, or is

10. Carthage, Watertown & Sackets Harbor R. R. Co.
11. Mohawk & Malone Railway Co.
12. Carthage & Adirondack Railway Co.
13. Gouverneur & Oswegatchie R. R. Co.
14. New York & Putnam Railroad Co.
15. Tivoli Hollow Railroad Company.
16. Beech Creek Railroad Company.
17. Dunkirk, Allegheny Valley & Pittsburg Railroad Company.

58 EXHIBIT F.

Report of the New York Central & Hudson River Railroad Company for the Year Ending the Thirty-first Day of October, A. D. 1900, Made Pursuant to Provisions of § 182, Chap. 908, Laws of 1896.

GRAND CENTRAL STATION, November 30, 1900.

To the comptroller of the State of New York:

Agreeably to law, as treasurer of the above company, I make the following report, viz:

1. This company began business in the State of New York in the month of November, 1869.

2. The last report made by this company to the comptroller of the State of New York under the provisions of the above act was made for the year ending October 31, 1899.

3. Value of real estate and of interest or interests in real property in New York State, and w-ere situated—cannot give.

4. Organized under the laws of the State of New York.

5. Date of organization of the company, November 1, 1869.

6. Total authorized capital of company.....	$115,000,000.00
7. Whole number of shares of stock authorized...	1,150,000
8. Number of shares of stock issued.....	1,150,000
9. Par value of each share.....	100.00
10. Amount paid into the treasury of the company on each share.....	See answers to Nos. 8 & 9.
11. *a.* Amount of capital paid in cash or property.....	
b. Amount of capital paid in good will.....	
c. Amount of capital paid in patents or copyrights.....	

59 12. Amount of capital upon which dividends were declared—$100,000,000.00 before April 1, 1900, $115,000,000.00 after April 1, 1900.

13. Date of each dividend payable: Jan'y 15, April 16, July 16, Oct. 16, 1900.

14. Amount of each dividend declared: $1,250,000 Jan. & April, $1,437,500 July & October.

15. Rate per cent. per annum of dividends, five per cent.

16. The business transacted by this company in the State of New York for the year ending October 31st, 1900, was as follows, viz: Transportation.

17. And such business was carried on at the following named place or places: Very numerous places.

18. Capital stock employed in New York State, $60,370,000 prior to March 31, 1900, $69,425,500, from April 1, 1900.

19. If not in New York state where and how employed.

20. Highest price of sales of stock during the year aforesaid, 139⅜.

21. Lowest price of sale of stock during the year aforesaid, 120.

G. S. PRINCE, Treasurer.

STATE OF NEW YORK, }
County of New York, } ss:

On this fifth day of December, A. D. 1900, personally appeared before me, a notary public in and for the county of New York, George S. Prince, treasurer of the above-named company, who, being duly sworn according to law, did depose and say, that the foregoing report is just, true and correct, according as the accounts stand in the books of the company, and that includes all dividends,
60 whether cash, stock, script, or of any other character or description, declared by said company during the year ending on the thirty-first day of October, A. D. 1900.

G. S. PRINCE, Treasurer.

Sworn to and subscribed before me, the day and year aforesaid.

J. P. McMAHON,
Notary Public (39), N. Y. Co.

Remarks.

The capital stock employed outside of New York State has been determined by taking such proportion thereof as the assets outside of the State bear to the total assets of the company in and out of New York State; viz: 39.63% of $100,000,000 from Nov. 1, 1899, to March 31, 1900; and 39.63% of $115,000,000 from April 1, 1900, to October 31, 1900.

Distribution of Assets, October 31st, 1900.

	In N. Y. State.	Outside N. Y. State.	Total.
Cost of road and equipment	$166,074,130.15	$15,230,186.06	$181,304,316.21
Hudson River bridges, Albany	1,905,878.36		1,905,878.36
Advances for lessor companies	5,715,997.91	944,293.07	6,660,290.98
Stock of other companies	9,055,764.16	117,503,817.73	126,559,581.89
Bonds of other companies	4,080,411.52		4,080,411.52
Cash and cash assets	8,847,030.28	10,000.00	8,857,030.28
Ownership in other lines of real-estate, etc	3,717,033.57	521,785.07	4,238,818.64
Fuel and supplies	3,992,485.63	100,000.00	4,092,485.63
Sinking fund	1,198,843.18		1,198,843.18
	$204,587,574.76 (60.37%)	$134,310,081.93 (39.63%)	$338,897,656.69 (100%)

61 Lines Leased.

Beech Creek railroad.
Carthage & Adirondack Railway Company.
Carthage, Watertown & Sackets Harbor Railroad Company.
Dunkirk, Allegheny Valley & Pittsburg Railroad Company.
Gouverneur & Oswegatchie Railroad Company.
Mohawk & Malone Railroad Company.
New Jersey Junction Railroad Company.
New York & Harlem Railroad Company.
New York & Putnam Railroad Company.
Niagara Falls Branch Railroad Company.
Oswego & Rome Railroad Company.
Pine Creek Railway Company.
Rome, Watertown & Ogdensburg Railroad Company.
Spuyten Duyvil & Port Morris Railroad Company.
Syracuse, Geneva & Corning Railway Company.
Tivoli Hollow Railroad Company.
Troy & Greenbush Railroad Association.
Utica & Black River Railroad Company.
West Shore Railroad Company.

62 STATE OF NEW YORK:

Comptroller's Office.

In the Matter of the Application of THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY for a Revision and Readjustment of the Account Heretofore Audited and Stated by the Comptroller of the State of New York for Taxes under Section One Hundred and Eighty-two of the Tax Law for the Year Ending October Thirty-first, Nineteen Hundred.

Mr. Meeder, in response to the comptroller's request for information as to the security given for the loan of money wherewith this company purchased the shares of capital stock of the Chesapeake and Ohio Railway Company, the Lake Erie and Western Railroad Company, and the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, respectively, says: That the said respective stocks were pledged as collateral for the loan of money obtained to purchase them.

In response to the comptroller's request for information as to any stocks of foreign corporations, other than those of the Lake Shore and Michigan Southern Railroad Company and the Michigan Central Railroad Company, which were placed as collateral security within the State during the year, Mr. Meeder says the only
63 stocks so placed were those above named, and the amounts of each so placed were the amounts thereof owned by this com-

pany, as testified by him and shown in detail upon page 5 of the stenographer's typewritten minutes.

Petitioner also offers in evidence so much of the annual report of the Lake Shore and Michigan Southern Railroad Company for the year 1900 as shows its miles of road owned; entire length 1,093.48 miles, and length in New York State 71.12 miles, and its total miles of road owned and leased, entire length 1,412.78 miles, and length in this State 71.12 miles.

It is consented that the foregoing be considered as part of the evidence taken herein at the hearing on the 15th day of July, 1901.

64 Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK upon the Relation of the New York Central and Hudson River Railroad Company
against
ERASTUS C. KNIGHT, as Comptroller of the State of New York.
} Stipulation.

It is hereby stipulated that Relator's Exhibits D and E, being respectively agreements between relator and the Guaranty Trust Company of New York, setting forth the terms upon which loans were made to said relator of the moneys used and applied in the purchase of shares of the capital stock of the Lake Shore and Michigan Southern Railway Company, and of the Michigan Central Railroad Company, and the certificates of said shares deposited as collateral security for the payment of said loans and interest thereon; as also Relator's Exhibit F, being the report of the Lake Shore and Michigan Southern Railway Company for the year 1900, may be produced and used by either party upon any appeal herein with the same effect as if fully set forth herein, and if not so pro-
65 duced, shall be deemed sufficiently described herein.

Dated March 5th, 1902.

IRA A. PLACE,
Attorney for Relator.
JOHN C. DAVIES,
Attorney General, Attorney for Respondent.

66 Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW York upon the Relation of the New York Central and Hudson River Railroad Company, Relator,
against
ERASTUS C. KNIGHT, as Comptroller of the State of New York, Respondent.

Stipulation under Sections 3301 and 1353 of the Code of Civil Procedure.

It is hereby stipulated, under section 3301 of the Code of Civil Procedure, that the foregoing are true copies of the petition for writ of certiorari, order for issuance of writ, writ, and return to writ and certification thereof, as required by section 1353 of the Code of Civil Procedure is hereby waived.

Dated New York, March 4, 1902.

IRA A. PLACE,
Attorney for Relator.
JOHN C. DAVIES,
Attorney General, Attorney for Respondent.

67 Order of Appellate Division.

At a stated term of the appellate division of the supreme court of the State of New York, held in and for the third judicial department of said State, at the court room of said court in the city of Albany, commencing on the sixth day of May, 1902.

Present: Hon. Charles E. Parker, P. J., Hon. Walter Lloyd Smith, Hon. S. Alonzo Kellogg, Hon. Emery A. Chase, Hon. Edgar L. Fursman, associate justices.

THE PEOPLE OF THE STATE OF NEW YORK upon the Relation of the New York Central and Hudson River Railroad Company, Relator,
against
ERASTUS C. KNIGHT, as Comptroller of the State of New York, Respondent.

This cause coming on to be heard on the petition, order for issuance of writ of certiorari, the writ of certiorari and the return thereto, and after hearing Ira A. Place, Esq., of counsel for the relator,
68 and Henry B. Coman, Esq., of counsel for the respondent, the comptroller of the State of New York, the court doth determine as follows:

As Matters of Fact.

I. The comptroller of the State of New York fixed the amount upon which the tax against the relator should be computed, under section 182 of the tax law, for the year ending October 31, 1900, at $106,000,000, and the tax thereon at $159,000.

II. Relator's statement or report showed that its total capital on October 31st, 1900, was $338,897,656.69. This amount included an item of $965,217.97 anticipated dividends, being estimated earned and undeclared dividends on capital shares owned by relator in other corporations; also, an item of $171,653.20 carried on relator's books as bills receivable, but consisting of expenditures on leased lines for which relator holds no obligation for reimbursement.

III. Relator's statement or report also showed that of its total capital the amount of $205,029,380.45 was employed within this State, and that the balance thereof, $133,868,276.24 was employed outside of this State. The balance of relator's said total capital claimed to be employed outside of this State includes an item of $15,230,186.06, being such proportion of all of relator's rolling stock as the mileage thereof without the State bears to the entire mileage of said rolling stock; an item of $115,089,533.01, amount of capital stock owned by relator in foreign corporations; an item of $2,311,686, being that portion of the capital stock owned by relator in a domestic corporation which corresponds with the proportion of the assets of such domestic corporation used and employed without the
69 State; an item of $100,000, coal and supplies without the State; and the items of $965,217.97 and $171,653.20 above-mentioned in finding No. II hereof.

IV. The average amount of relator's capital stock at par during the year aforementioned was $108,750,000, and the average price thereof $129.8125, and the average cash value of the average amount of relator's capital stock for said year was $141,171,093.75.

As Matters of Law.

I. That, for the purpose of fixing the amount upon which the tax should be based, the said items of $965,217.97 and $171,653.20 should be excluded, leaving the amount of relator's total capital or assets $337,760,785.52; to the portion of said total capital, viz., $205,029,380.45, which relator admits was employed within this State, should be added the said item of $2,311,686, making of relator's capital and assets employed within this State a total of $207,341,066.45 and being .61386 + per cent. of the entire capital of relator.

II. The tax should be based and computed upon the average cash value or market price of .61386 + per cent. of the average amount of relator's capital stock during said year.

III. The amount upon which the tax against relator should have been and should be computed is $86,659,287.62 and the tax should have been and should be $129,988.93.

IV. The determination of the comptroller should be modified by reducing the tax to $129,988.93 and, as so modified, affirmed, with fifty dollars ($50) costs and disbursements to the relator.

70 Now, on motion of Ira A. Place, attorney for the relator, it is

Ordered that the said determination of the comptroller be, and the same is hereby, modified; and it is further

Ordered that the said account be corrected and restated, and that the said taxes be reduced by the sum of $29,011.07, with interest from the date of the deposit thereof by the relator with the State treasurer, with $50 costs and disbursements to the relator, and that the relator have judgment therefor.

[L. S.] JOSEPH H. HOLLANDS, Clerk.

71 Judgment of Appellate Division.

Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK upon the Relation of The New York Central and Hudson River Railroad Company, Relator, *against* ERASTUS C. KNIGHT, as Comptroller of the State of New York, Respondent. } Judgment, 1902.

This cause coming on to be heard on the petition, order for issuance of writ of certiorari, the writ of certiorari and return thereto, and after hearing Ira A. Place, Esq., of counsel for the relator, and Henry B. Coman, Esq., of counsel for the respondent, the comptroller of the State of New York, and the appellate division of the supreme court, in and for the third department, having made and filed its decision thereon stating the grounds whereon the court hath decided and determined that the determination of the said comptroller denying the application of relator for revision and readjustment of the taxes assessed and determined against it for the year ending October 31, 1900, under section 182 of the tax law, and for a resettlement of the account by striking therefrom or by crediting to the

72 account of the said relator in whole or in part as in and by its said application prayed for should be modified, and that the said account should be corrected and restated, and the taxes reduced by the sum of twenty-nine thousand eleven and seven-hundredths ($29,011.07) dollars, with interest thereon from the date of deposit thereof by the relator with the State treasurer, with fifty dollars ($50) costs and disbursements to the relator, and the relator's costs having been taxed at the sum of one hundred ninety-nine and twenty-five hundredths ($199.25) dollars,

Now, on motion of Ira A. Place, attorney for the relator The New York Central and Hudson River Railroad Company, it is

Ordered and decreed, that the said determination of the comptroller be, and the same is hereby, modified, and that the said account be corrected and restated, and that the said taxes be reduced by the sum of twenty-nine thousand eleven and seven-hundredths dollars ($29,011.07), with interest from the date of the deposit thereof by the relator with the State treasurer, and that the relator recover from the respondent herein the sum of one hundred ninety-nine and twenty-five hundredths dollars ($199.25) costs as taxed, and that it have execution therefor.

JOHN FRANEY, Clerk.

Sept. 20th, 1902, 10.40 a. m.

73 Opinion of Appellate Division.

Supreme Court, Appellate Division, Third Department.

Argued May Term, 1902; Decided Adjourned Term, July, 1902.

THE PEOPLE OF THE STATE OF NEW YORK upon the Relation of The New York Central and Hudson River Railroad Company

against

ERASTUS C. KNIGHT, as Comptroller of the State of New York.

Before Parker, P. J., Smith, Kellogg, Chase, and Fursman, Associate Justices.

Certiorari issued out of the supreme court and attested on the 16th day of November, 1901, directed to Erastus C. Knight, comptroller of the State of New York, commanding him to certify and return to the office of the clerk of the county of Albany, all and singular the account, proceedings and evidence had before him on the application of the relator for the revision and readjustment of the corporation franchise tax imposed upon it for the year ending October 31st, 1900.

Ira A. Place, for relator;

John C. Davies, attorney general, and Henry B. Coman, deputy attorney general, for respondent.

74 CHASE, J.:

The principal contention of the relator is that under section 182 of the tax law in cases where dividends amounting to less than six per centum have been declared upon the capital stock of the corporation, and the cash value of the capital stock exceeds its par value, the tax should be at the rate of one and one half mills upon the *par value* of that portion of the capital stock employed within

this State and not upon its *cash value*. We understand that the court of appeals in People *ex rel.* N. Y. & E. R. F. Co. *vs.* Roberts, 168 N. Y., 14, has held against the relator's contention. The court in that case say: "The direction that the tax shall be 'upon such portion of the capital stock at par, as the amount of capital employed within this State bears to the entire capital of the corporation' was not intended to establish or fix the rate at which such capital stock was to be assessed, but a rule for the computation of the amount of capital stock on which assessment was to be made" (see People *ex rel.* Union Ferry Company *vs.* Roberts, 68 A. D., 157). The question raised by the relator is not now an open one for discussion in this court.

The comptroller fixed the amount upon which the tax should be computed against the relator under section 182 of the tax law at $106,000,000 and the tax thereon at $159,000. The relator contends that even if the amount upon which the tax should be computed is based upon the cash value of its capital stock and not its par value, the amount as fixed by the comptroller is excessive. We are unable to ascertain just how the amount was determined by the comptroller. The relator claims that its entire capital on the 31st day of October, 1900, was $338,897,656.69 and included in this amount is an item of $965,217.97 for anticipated dividends on stock of other
75 corporations owned by the relator and an item of $171,653.20 carried on the books of the relator as bills receivable. The item for anticipated dividends was made up by taking the portion of the year since dividends were last declared on the stock so owned by the relator and computing dividends for such time upon the assumption that further dividends would thereafter be declared at the same rate per annum. Possible or probable dividends, until declared, are a mere incident to the stock included in its market value. The item called bills receivable consists of expenditures for lessee and other corporations and special expenditures for the common good of the several corporations. This item is not an obligation against any corporation or corporations and the relator expects no direct return for it. It does not exist as an asset apart from the property of the corporations or the stock therein. For the purpose of fixing the amount upon which this tax should be computed these items should be deducted from the capital of the relator as above stated, leaving the amount $337,760,785.52. Of this amount the relator admits that $205,029,380.45 was employed within this State. The balance of the assets consists of $15,230,186.06 for rolling stock, being such proportion of all relator's rolling stock as the mileage thereof without the State bears to the entire mileage of all such rolling stock; $100,000 for coal and supplies without the State; $115,089,533.01 for stock owned by the relator in foreign corporations, and $2,311,686 for that portion of the capital stock owned by the relator in a domestic corporation, which corresponds with the proportion of the assets of such domestic corporation used without the State.

Under the decision in People *ex rel.* The Lackawanna Transportation Company *vs.* Knight —— A. D. — the rolling stock
76 without the State and the said coal and supplies are not capital employed within this State. The court of appeals in People *ex rel.* E. E. L. Co. *vs.* Campbell, 138 N. Y., 543, referring to stocks owned by the relator in that case, say: "As to so much of such stocks as was in corporations organized and existing in this State, it cannot be doubted that its capital was employed within this State. So much of its capital, to wit, its patents, as was used to purchase such stocks was employed for that purpose, and was thus used for the business of the relator. The stocks existed within this State and were kept and held to produce revenue here, and hence in every sense were employed within this State. They took the place as a portion of the relator's capital of the patent rights transferred in payment for them.

The stocks which the relator took in companies organized outside of this State stood for so much of the relator's capital invested outside of the State. It took a portion of its capital, to wit, a portion of its patent rights, and employed it outside of the State to purchase those stocks. Its property in those corporations, represented by its shares of stock, was outside of this State, and was in no sense employed here. Those stocks had no *situs* here and were not taxable here under any system of taxation which has ever existed in this State." (See People *ex rel.* E. E. L. Co. *vs.* Wemple, 148 N. Y., 690.) The fact that the principal part of the stock owned by the relator in foreign corporations has been pledged as collateral security for bonded indebtedness of the relator does not require that the stock so pledged, but still retained for all practical purposes, shall be omitted from the statement of relator's capital. The capital employed within this State, therefore, is said $205,029,380.45,
77 to which should be added $2,311,686, making a total of $207,341,066.45 and .61386 + per cent. of the entire capital of the relator. The average amount of the relator's capital stock at par during the year was $108,750,000, and the average price 129.8125. The average cash value of the average amount of relator's capital stock was $141,171,039.75. The amount upon which the tax should be computed against the relator, therefore, is $90,151,825.98, and the tax should have been $136,227.73.

The determination of the comptroller should be modified by reducing the tax to $136,227.73, and as so modified affirmed, with fifty dollars costs and disbursements to the relator.

51 Remarks.

Of the total capital stock of this company the sum of $6,436,714.00 employed outside of the State as follows:

1. The average amount of rolling stock owned by this company and employed in running outside of the State is.....	$5,435,240.00
(This amount is determined by taking such proportion of the value of the rolling stock as equals the wheelage outside of the State compared with the entire wheelage in and out of the State.)	
2. The investments of this company in shares of stock of railroad and coal companies situated entirely outside of this State; par value $1,169,500.00; actual value.....	1,001,474.00
Total capital employed outside of the State....	6,436,714.00

22. Names and addresses of other companies whose property is leased by company making report:

New York and Harlem Railroad Co.
Troy and Greenbush Railroad Association.
Spuyten Duyvil & Port Morris Railroad Co.
West Shore Railroad Company.
New Jersey Junction Railroad Co.
Rome, Watertown, & Ogdensburg R. R. Co.
Oswego and Rome Railroad Co.
Niagara Falls Branch Railroad Co.
Tivoli Hollow Railroad Company.
Beech Creek Railroad Company.
Dunkirk, Allegheny Valley & Pittsburg Railroad Co.
52 Utica and Black River R. R. Co.
Carthage, Watertown and Sacket Harbor Railroad Co.
Mohawk and Malone Railway Co.
Carthage & Adirondack Railway Co.
Gouverneur and Oswegatchie Railroad Company.
New York and Putnam R. R. Co.

Report of Appraisement of the New York Central and Hudson River Railroad.

STATE OF NEW YORK, County of New York, } ss:

On this thirteenth day of November, A. D. 1895, before me, the subscriber, a notary public in and for the county of New York, personally appeared Edward V. W. Rossiter, treasurer, and John

Carstensen, comptroller of the above-named company, who being by me severally duly sworn, did say that the amount of capital paid in of said company is $100,000,000.00 (after June 30, 1895), and that said company declared no dividend in cash, stock, scrip or of any other character or description during the year ending the first day of November, 1895, save the dividends herein reported, and that they will with fidelity, according to the best of their knowledge and belief, estimate and appraise the capital stock of said company at its actual value in cash, not less, however, than the average price which said stock sold for during said year.

E. V. W. ROSSITER, Treasurer.
J. CARSTENSEN, Comptroller.

Sworn to and subscribed before me the day and year aforesaid.

J. B. McMAHON,
Notary Public, New York County.

53 Office of the New York Central and Hudson River Railroad Company, Grand Central Station, New York, November 13th, 1895.

We, the undersigned, being the treasurer and comptroller of the above-named company, do certify that, in pursuance of our aforesaid oaths, we have estimated and appraised the capital stock of said company at its actual value in cash, as follows viz.: from 954,283 to 1,000,000 shares at ninety-eight dollars and sixty-two and one-half cents per share, amounting in the whole to eighty-nine million, two hundred and seventy thousand nine hundred dollars 00/100, per slip attached.

In witness whereof we have hereunto set our hands the day and year aforesaid.

E. V. W. ROSSITER, Treasurer.
J. CARSTENSEN, Comptroller.

Shares outst'g.	(Slip) period.	P'p'n of tax yr.	Average rate of sales per share.	
954,283	Nov. 1/94 to June 30/95	8/12s	98⅝	
	Appraised val'n			62,744,109.00
1,000,000	June 30/95 to Oct. 31/95	4/12s	98⅝	
	Appraised val'n			32,875,000.00
	Total average valuation			$95,619,109.00
Less amount employed outside of State $6,436,714. (at 98⅝)				6,348,209.00
				$89,270,900.00

54 EXHIBIT E.

Report of the New York Central and Hudson River R. R. Company for the Year Ending the Thirty-first Day of October, A. D. 1897, Made Pursuant to Provisions of § 182, Chap. 908, Laws of 1896.

GRAND CENTRAL STATION,
NEW YORK, November 15th, 1897.

To the comptroller of the State of New York:

Agreeably to law, as treasurer of the above company, I make the following report, viz:

1. This company began business in the State of New York, in the month of November, 1869.

2. The last report made by this company to the comptroller of the State of New York under the provisions of the above act was made for the year ending November 1st, 1896.

3. Value of real estate and of interest or interests in real property in New York State, and w-ere situated ..... Cannot give.

4. Organized under the laws of the State of New York.

5. Date of organization of the company, November 1, 1869.

6. Total authorized capital of company.....	$100,000,000 00
7. Whole number of shares of stock authorized..	1,000,000 00
8. Number of shares of stock issued.....	1,000,000 00
9. Par value of each share.....	100 00
10. Amount paid into the treasury of the company on each share.....	See answers to Nos. 8 and 9.
11. Amount paid in.....	
12. Amount of capital upon which dividends were declared.....	$100,000,000 00
13. Date of each dividend payable, January 15, April 15, July 15, October 15.	
14. Amount of each dividend declared.....	1,000,000 00

15. Rate per cent. per annum of dividends, four per cent.

16. The business transacted by the company in the State of New York for the year ending November 1st, 1897, was as follows, viz: Transportation.

17. And such business was carried on at the following-named place or places: Very numerous places.

18. Capital stock employed in New York State...	91,192,124 00

19. If not in New York State, where and how employed.....

Property permanently employed and invested outside of New York State.

20. Highest price of sales of stock during the year aforesaid, 115½.

21. Lowest price of sales of stock during the year aforesaid, 92½.

E. V. W. ROSSITER, Treasurer.

STATE OF NEW YORK, County of New York, } ss:

On this twentieth day of November, A. D. 1897, personally appeared before me a notary public in and for the county of New York, Edward V. W. Rossiter, treasurer of the above-named company,
56 who, being duly sworn according to law, did depose and say, that the foregoing report is just, true and correct according as the accounts stand in the books of the company, and that it includes all dividends, whether cash, stock, scrip, or of any other character or description, declared by said company during the year ending on the thirty-first day of October, A. D. 1897.

E. V. W. ROSSITER, Treasurer.

Sworn and subscribed before me the day and year aforesaid.

J. P. McMAHON,
Notary Public.

Remarks.

Of the total capital stock of this company the sum of.....	$8,807,876 00
is employed outside of the State as follows:	
1. The average amount of rolling stock owned by this company and employed in running outside of the State is.....	$5,411,063 00
(This amount is determined by taking such proportion of the value of the rolling stock as equals the wheelage outside of the State, as compared with the entire wheelage in and out of the State.)	
2. The investments of this company in shares of stock of railroad company, located and permanently engaged outside of this State. Par value $3,923,812, actual value.....	3,396,813 00
Total capital employed outside the State.....	$8,807,876 00

57 22. Names and addresses of other companies whose property is leased by company making report.

1. New York & Harlem R. R. Company.
2. Troy & Greenbush Railroad Association.
3. Spuyten Duyvil & Port Morris R. R. Co.
4. West Shore Railroad Company.
5. New Jersey Junction R. R. Company.
6. Rome, Watertown & Ogdensburg R. R. Co.
7. Oswego & Rome Railroad Company.
8. Niagara Falls Branch R. R. Co.
9. Utica & Black River Railroad Co.

in the cause on the 13th day of January, 1903, modifying the order of the appellate division, as indicated in the opinion of Haight, judge, a copy whereof is hereto annexed.

82 The said judgment of the court of appeals having remitted the proceedings to the comptroller, to assess the tax accordingly, without costs to either party, and further ordering that the record of the said proceedings in the court of appeals be remitted to the supreme court, according to the terms of the statute in such case made and provided, to be enforced according to law.

Now, therefore, on reading and filing the said remittitur of the court of appeals, and on motion of Hon. John Cunneen, attorney general, of counsel for the defendant, it is

Ordered and adjudged, that the judgment of the said court of appeals be, and the same hereby is, made the judgment of this court.

D. CADY HERRICK,
Jus. Sup. Ct.

STATE OF NEW YORK,
County of Albany, Clerk's Office, } ss:

I, John Franey, clerk of the said county, and also clerk of the supreme and county courts, being courts of record held therein, do hereby certify that I have compared the annexed copy — remittitur, record and judgment with the original thereof, filed in this office on the 14th day of February, 1903, and that the same is a correct transcript therefrom, and of the whole of said original.

In testimony whereof, I have hereunto set my hand and affixed my official seal this 7th day of July, 1904.

[SEAL.] JOHN FRANEY, Clerk.

83 In the Court of Appeals of the State of New York.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* THE NEW YORK Central and Hudson River Railroad Company, Appellant and Respondent,

v.

ERASTUS C. KNIGHT, as Comptroller of the State of New York, Respondent and Appellant.

Cross-appeals from an order of the appellate division of the supreme court in the third judicial department, entered September 20, 1902, which modified and affirmed as modified a determination of the defendant assessing a franchise tax against the relator for the year ending October 31, 1900.

The facts, so far as material, are stated in the opinion.

Opinion of the court per HAIGHT, J.:

"I concur in the conclusions reached by O'Brien, J., except as to that part thereof which holds that the item of $15,230,186.06 is not

taxable. The court below found that this item represented the rolling stock employed outside of the State, it 'being such proportion of all of relator's rolling stock as the mileage thereof without the State bears to the entire mileage of said rolling stock.' As I understand this finding it is to the effect that the rolling stock of the relator is used in this State and outside of the State; that is, cars are loaded at some point in the State, as for instance in the city of New York,
and run over the relator's road to some other point, say, the
84 city of Buffalo. They then are transferred on to other roads
and are run to points outside of the State where they are unloaded and then reloaded and returned to this State. The entire mileage includes that traveled in this State as well as that out of the State; this, with the distance traveled outside of the State and the total value of the stock, furnishes the proportion upon which the computation is made.

The question is as to whether this stock is taxable under the statute. The relator is a domestic corporation. It owns the rolling stock. It is used upon its lines of railroad in this State. True, the cars are transferred on to other roads and are run outside of the State for the purpose of facilitating the transportation of persons and freight without change of cars or of breaking bulk, but the use of the cars outside of the State is but temporary, for they are returned as soon as reloaded and are again used in the transportation of persons and property within this State. It seems to me, therefore, that, under a fair and reasonable construction of the statute this item should have been included as capital employed within this State.

Under the findings of the court below, as we understand them, the average amount of the relator's capital stock during the year was $108,750,000; the average price was $129.8125, making the average cash value of the relator's capital stock for the year $141,171,093.75. The entire amount of the relator's total assets was $337,760,785.52, and the portion of such assets as used in this State $205,029,380.45, to which sum should be added the relator's rolling stock, $15,230,186.06, making the total assets used within the State $220,259,566.51. The statement would thus be—

85 x : 141,171,093.75 : : 220,259,566.51 : 337,760,785.52. Under this statement x = $92,060,076.91, the amount to be assessed at one and one-half mills, which amounts to $138,090.11.

In view of the fact that there is no express finding by the comptroller that none of the relator's rolling stock was used exclusively outside of the State, I think it advisable that the proceedings should be remitted to the comptroller, to the end that further evidence may be taken upon that subject in case it should be claimed that some portion of the relator's rolling stock was used continuously outside of the State, and if it should be found that such was the fact, the amount thereof should be deducted and the order of the appellate division and that of the comptroller should be modified accordingly, without cost to either party."

Opinion per O'BRIEN, J.:

"This appeal presents a controversy between the relator and the State concerning the amount of the annual franchise tax for the year ending October 31, 1900. The statute prescribes that this tax must be computed upon the basis of the amount of the relator's capital stock employed within the State. The main contention of the learned counsel for the relator is that the computation should be made upon the stock so employed at its par and not its actual value, and, hence, the determination now here for review is erroneous since the computation was made upon the latter principle. The language of section 182 of the tax law would seem to support the relator's contention, but this court has recently held that this section must be read with section 190, and when so read the basis for the tax is the actual and not the par value of the stock.
86 (People *ex rel.* N. Y. & E. R. Ferry Co. *v.* Roberts, 168 N. Y. 14.) In the present case it would, doubtless, be to the advantage of the relator to have the tax based upon the par value of the stock, since that value is much less than the actual value and the dividends are only five per cent., but in case of a corporation that had paid even a smaller dividend and whose stock was much below par it would be decidedly to its disadvantage. By reading the two sections together absurd and unequal results are avoided. The two sections are apparently conflicting. In such cases it is the duty of courts to reconcile contradictory or conflicting provisions when possible, and the case cited is a precise authority for the principle that the tax should be based upon the actual value. This permits the statute to operate in a way that is reasonable and just while the other view would render it even more confusing than it now is. Courts cannot always follow logical reasons when dealing with a complicated statute constructed without much method or system in the arrangement of its different parts and lacking in clearness and precision of language.

Passing from this question of construction, there is nothing left of the controversy on either side save the proper application of the rule and the principles upon which the actual value of the relator's capital in this State is to be ascertained. With respect to this question it should be noted at the outset that the writ of certiorari was made returnable at the appellate division and the issues were there tried and heard upon the relator's petition, the writ and the return of the comptroller, including the papers attached thereto. The general and primary question that the court had before it for decision was one of fact, and that was the actual value of that
87 part of the relator's capital employed within this State, and upon that question the learned court made findings upon which its general conclusion is based. In the main we think these findings are correct. There is one item of property which the court found, as matter of fact, to be employed outside the State, which, nevertheless, it felt constrained for some reason that does not dis-

tinctly appear to include as part of the property or capital stock employed in this State. It may be that this is an inadvertence or oversight, but it will be referred to more fully hereafter. The learned court in stating the account excluded certain items of property which the learned attorney-general contended and still insists should be included, and the ground upon which they were excluded from the calculation was that they either represented property employed outside the State or did not in any legal sense constitute capital at all. A very brief reference to these items will show that the action of the court below was correct.

(1.) The relator held $90,578,400 of the stock of the Lake Shore and Michigan Southern Railway Company and $18,900,825 in the Michigan Central Railroad Company. This stock was part of the relator's capital or general assets. Both companies are foreign corporations, the former being partly within and partly without the State and the latter entirely without the State. This stock was purchased by the relator by the issue of bonds and the stock was pledged to a trust company as collateral security for the payment of the bonds. The relator being the owner of these stocks, they constituted part of its capital, but that part of its capital was not employed within this State, and so this court has held. (People *ex rel.* Edison El. L. Co. *v.* Campbell, 138 N. Y., 543; People *ex rel.* Edison El. L. Co. *v.*
88 Wemple, 148 N. Y. 690.) In the former case Judge Earl, speaking for this court, said: 'The stock which the relator took in companies organized outside of this State stood for so much of the relator's capital invested outside of the State. It took a portion of its capital, to wit, a portion of its patent rights, and employed it outside of the State to purchase those stocks. Its property in those corporations represented by its shares of stock was outside of this State and was in no sense employed here. Those stocks had no *situs* here and were not taxable here under any system of taxation which has ever existed in this State.' In the case at bar the stock was purchased, not with patent rights, but with the bonds of the company sought to be taxed. The form of the consideration, however, can make no difference, and so long as that part of the relator's capital represented by the purchase was employed outside of the State it should not be included. Nor can it be important that the stock had for convenience been used as a security upon deposit as collateral for the bonds in a trust company located in this State.

(2.) The court below found that a certain portion of the relator's rolling stock, that is to say, its cars, both freight and passenger, was employed outside the State, the proportion being estimated on the mileage or wheelage basis at $15,230,186.06. The court excluded this item from the calculation on the authority of People *ex rel.* Lackawanna Transp't'n Co. *v.* Knight (75 App. Div. 164). It was there held that the term 'employed within this State,' used in section 182, did not mean simply the legal *situs* of the property, and this principle was decided in other cases. (People *ex rel.* Chicago Junction, etc., Co. *v.* Roberts, 154 N. Y., 1; People *ex rel.* Washington Mills Co.

v. Roberts, 8 App. Div. 201; affirmed on opinion below, 151
89 N. Y., 619.) It is obvious that since the relator is a great interstate railroad traversing the continent that a large proportion, or at least some, of its rolling stock must be always employed outside of the State. It may be that the *situs* of all the relator's property is in the State of its creation, but, as already remarked, the question is not where the *situs* is, but where the property is employed. It may be that various States through which the relator's railroad is operated impose taxes upon such part of its property as upon the basis adopted here is found to be employed in these States respectively, so we think that the learned court below was correct in excluding this item from the estimate of the relator's property employed within this State. The relator is practically operating a continuous line of railroad from New York to Chicago and beyond. It not only owns nearly $110,000,000 of the stock of the western connecting roads, as shown by the record, but is operating these roads as western connections either under leases or traffic agreements. It is practically the owner of these roads just as it is the owner of the West Shore in this State. The operations of the Central do not stop at Buffalo, but extend beyond and through Canada and various Western States. It owns these western roads by practically as good a title as it owns the West Shore, in this State, and hence, as already observed, it is operating a continuous line of railroad from the Atlantic seaboard through various States of the West. The part of the line beyond the limits of this State is longer than that part from New York to Buffalo, and the local and through traffic is immense. Therefore, to contend that all the rolling stock of the relator is 'employed in this State' would seem to me to be an indefensible position. Certainly some of it must necessarily be employed in other States.
90 It cannot all be employed at the eastern end of the line. If so, then the part of the rolling stock employed outside and inside of this State is a question of fact and the court below has found that a designated part of the rolling stock is employed without the State. This court has no power to interfere with that result unless it can say that there is absolutely no evidence in support of the finding. It cannot say that for the plain reason that, as appears from the record, there was evidence on that subject and no one claims otherwise. It has the power to say that, granting to the full extent the fact found as to the employment of part of the rolling stock out of this State, yet as matter of law, since the relator is a domestic corporation and the *situs* of all its personal property is here, all the rolling stock is employed in this State. But such a decision would seem to me to be not only plainly wrong in principle, but sharply opposed to many decisions of this court, some of which are cited above. The stock of the western railroads, amounting to nearly $110,000,000, and the coal and other personal property that we have just held is not employed in the State, is owned and held here in just the same sense as the rolling stock, and why this property is employed outside the State, and all the rolling stock within the

State is not made very clear to me, and, therefore, I am in favor of accepting the finding of the trial court that a certain and designated part of the cars and engines of the relator are employed outside of the State.

(3.) The learned court below found that three other items of the relator's property, amounting in the aggregate to $1,236,871.17, was not capital at all, or at least was not employed in this State.
91 This general item was made up of the sum of $965,217 97 for 'anticipated dividends' on stock of other corporations which the relator owned. The dividends had not been declared, and were, therefore, a mere incident to the stock. It seems to be conceded by both parties that this item was properly excluded. The second item embraced in the general amount above stated was $171,653.20 for bills receivable. This sum appears to have been made up of expenditures by the relator on leased lines. No direct return is expected for these expenditures and the relator holds no obligation for reimbursement, although carried on the books as 'bills receivable,' and so the court below properly held that this item constituted no part of the relator's property within this State for the purposes of the franchise tax. The third item entering into the general sum above stated was $100,000 for coal and supplies without the State. It is hardly conceivable that all the coal which the relator uses in the operation of its railroad can be said to be employed within this State, and so this item was properly found to be property not employed in this State. There was no error in the decision of the court below excluding these three items from the calculation.

(4.) The relator owned $2,597,400 of the capital stock of the Merchants Dispatch Transportation Company, a domestic corporation engaged in the transportation business. Eighty-nine per cent. of that amount, or $2,311,686, represented business of that company outside the State, and although these facts are found by the learned court below, it included the latter amount in its valuation of the relator's property employed within this State. Since the relator's holdings in this company were employed outside the State we think they should not be included in the calculation under the authorities cited above. It is very difficult
92 to see how a distinction was made between those items and the other items referred to which the learned court below excluded. It seems to have been assumed that since this stock was that of a domestic corporation it constituted a part of the relator's property employed in this State; but, as already observed, the legal *situs* of the property does not determine the question, and since the learned court below found that the transportation company that issued the stock employed the capital represented thereby outside the State it is difficult to understand how the relator, by the mere fact of its ownership of the stock, could employ the capital represented by it in this State. With respect to this item, we think that the de-

cision of the learned court below should be corrected by the proper modification.

By a process of calculation which is not questioned here by either party, except as to the matters above referred to, the learned court below found, as stated in the opinion, that the amount of the relator's capital employed within this State upon which the tax should be computed was $90,151,825.98, but since that amount was the result of an error in including a portion of the stock of the transportation company employed without the State, namely, the sum of $2,311,686, the calculation and estimate should be corrected upon the principles adopted as to the other items, and this process which seems to have been finally adopted by the court below in the official report of the case, will give the following result: The percentage of its entire capital employed within the State during the year was .60702, or over sixty per cent. The average amount of its entire capital stock at par was $108,750,000, and the average share price was $129.8125, making the average value for the average amount of stock
93 $141,171,093.75, and the amount upon which the tax of one and one-half mills should be computed $85,694,383.18, and the amount of the tax $128,541.57. There is a material discrepancy between the amount upon which the tax is to be computed as stated in the opinion of the learned court below and that stated in the findings. In the former, as already observed, the amount stated as the basis of the tax is $90,151,825.98 and the tax $136,227.73, while the actual finding of the court is that the amount upon which the tax should have been and should be computed is $86,659,287.62, and the tax should have been and should be $129,988.93. The discrepancy may, no doubt, be accounted for by assuming that the court below, in making up the judgment, did not follow the opinion. However that may be, it will be seen that the result expressed in the findings below makes the tax somewhat larger than the result at which we have arrived. The opinion of the court below as found in the record differs materially from that contained in the official report of the case (75 App. Div. 169). In the latter the case seems to be decided upon the principles herein stated, the slight differences in results being due to an error in the figures.

The order of the appellate division should be modified accordingly, with costs to the relator in this court."

Parker, Ch. J., Bartlett, Martin and Cullen, JJ., concur with Haight, J.; O'Brien, J., reads for modification of order; Vann, J., absent.

Ordered accordingly.

94 [Endorsed:] In the court of appeals of the State of New York. The People of the State of New York *ex rel.* The New York Central and Hudson River Railroad Company, app'l't & resp't, against Erastus C. Knight, as comptroller of the State of New York, resp't & app'l't. Opinion.

95 In the Court of Appeals.

THE PEOPLE OF THE STATE OF NEW YORK upon the Relation of The New York Central and Hudson River Railroad Company
against
NATHAN L. MILLER, as Comptroller of the State of New York.

Papers on Appeal from Order, Proceeding for 1900.

Ira A. Place, attorney for appellant, Grand Central station, borough of Manhattan, N. Y. city, N. Y.
John Cunneen, attorney-general, attorney for respondent, capitol, Albany, N. Y.

96 Notice of Application for an Order for a Writ of Certiorari and for Writ.

Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK upon the Relation of The New York Central and Hudson River Railroad Company
against
NATHAN L. MILLER, as Comptroller of the State of New York.

SIR: Please take notice that a motion will be made by and on behalf of the New York Central and Hudson River Railroad Company, at a special term of the supreme court in and for the county of Albany, to be held at the city hall in the city of Albany, N. Y., on the 13th day of June, 1903, at 10.30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order for a writ of certiorari, and also for a writ of certiorari, to be directed to you, to review the determination of the comptroller of the State of New
97 York, dated April 23, 1903, a copy of which is hereto annexed, to be returnable according to law, and for such other and further relief as may be proper.

Dated New York, May 20, 1903.

Yours, &c.,
IRA A. PLACE,
Attorney for Appellant, The New York Central and Hudson River Railroad Company.

Room 417, Grand Central station, borough of Manhattan, New York city, N. Y.

To Hon. Nathan L. Miller, comptroller of the State of New York, Albany, N. Y.

98 STATE OF NEW YORK, COMPTROLLER'S OFFICE,
ALBANY, April 23, 1903.

In the Matter of THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* N. Y. C. & H. R. R. R. Co., Appellant-Respondent,
vs.
ERASTUS C. KNIGHT, as Comptroller of the State of New York, Respondent and Appellant.

The proceedings in the above-entitled action having been, by order of the court of appeals, dated January 13, 1903, remitted to the comptroller to take evidence and determine as to whether any portion of the relator's rolling stock was, during the year in question, exclusively or continuously without the State of New York, and testimony having been submitted upon said question and due consideration having been given thereto, it is hereby found and determined that none of the rolling stock of the relator, the said N. Y. C. & H. R. R. R. Co. was during the year in question continuously or exclusively employed without the State of New York, and
99 that the said relator is not entitled to any reduction from the amount found assessable by said judgment of the court of appeals, on account of the employment of any rolling stock outside the State of New York during the year in question.

NATHAN L. MILLER,
Comptroller.

The N. Y. C. & H. R. R. R. Co., New York Central station, New York city.

100 Order for Issuance of Writ of Certiorari.

At a special term of the supreme court held in and for the county of Albany, at the city hall in the city of Albany, N. Y., on the 13th day of June, 1903.

Present: D. Cady Herrick, justice.

THE PEOPLE OF THE STATE OF NEW YORK upon the Relation of The New York Central and Hudson River Railroad Company
against
NATHAN L. MILLER, as Comptroller of the State of New York.

On reading and filing the petition verified and dated the 10th day of June, 1903, of the New York Central and Hudson River Railroad Company, and upon the undertaking heretofore filed by the said railroad company, pursuant to section 197 of the tax law, and upon the notice of this application duly served on the comptroller of the State of New York, and after hearing William T. Rudd, of counsel for the petitioner, and John Cunneen, attorney general,

for the State comptroller, and on motion of Ira A. Place, Esq., attorney for the petitioner, it is

101 Ordered, that a writ of certiorari do issue from and out of this court, pursuant to the prayer of the petitioner, directed to Nathan L. Miller, as comptroller of the State of New York, to review the decision and determination of the comptroller mentioned and described in the petition, and the question involving the merits therein mentioned, both upon the law and the facts, which writ shall be returnable within twenty days after service thereof upon the said comptroller, at the office of the clerk of Albany county.

Enter.

D. CADY HERRICK, Justice.

102 Writ of Certiorari.

Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK upon the Relation of The New York Central and Hudson River Railroad Company

against

NATHAN L. MILLER, as Comptroller of the State of New York.

Whereas, we have been informed by the verified petition of the New York Central and Hudson River Railroad Company, dated and verified the 10th day of June, 1903, that certain proceedings have been had before the comptroller of the State of New York in a certain matter entitled "In the matter of The People of the State of New York *ex rel.* N. Y. C. & H. R. R. R. Co., appellant, respondent, *vs.* Erastus C. Knight, as comptroller of the State of New York, respondent and appellant," upon the application of the said railroad company to revise and readjust an account heretofore audited and stated by the said comptroller of the State of New York for taxes to be paid by the said The New York Central and Hudson River Railroad Company under section 182 of the tax law, which said application was made February 14, 1903, and a hearing upon such application having been had on the 19th day of February, 1903, and the said comptroller having thereafter made his determination upon such application to the applicant, the petitioner herein, deny-

103 ing the application and declining to make any revision or readjustment of the said account, and the said The New York Central and Hudson River Railroad Company having now made application to this court for a writ of certiorari to review the said decision and determination of the said comptroller,

And we being willing for such purposes to be certified of such proceedings, if any such were had, do hereby command and strictly enjoin Nathan L. Miller, as comptroller of the State of New York, that he certify and return all and singular the evidence before him

on such application, and all the proceedings thereon, and all his decisions and actions in the premises, with all the evidence, documents, reports, records and papers relating thereto in his possession or under his control, submitted to or considered by him, concerning the said account, and the grounds of his refusal to revise and readjust the same, within twenty days after the service upon him of this writ, at the office of the clerk of Albany county, under his proper hand, pursuant to the provisions of the tax law and the provisions of title II. of chapter 16 of the Code of Civil Procedure, so that our supreme court may further cause to be done thereon what of right and according to law ought to be done, and let the defendant have then and there this writ.

Witness the Hon. D. Cady Herrick, justice of our honorable court, at the court house in the city of Albany, N. Y., this 13th day of June, 1903.

JOHN FRANEY, Clerk.

IRA A. PLACE,
Attorney for the Relator, Grand Central Station,
Borough of Manhattan, N. Y. City, N. Y.

The above writ is hereby allowed this 13th day of June, 1903.

D. CADY HERRICK,
Justice Supreme Court.

104 Petition for Writ.

Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK upon the Relation of The New York Central and Hudson River Railroad Company
against
NATHAN L. MILLER, as Comptroller of the State of New York.

To the supreme court of the State of New York:

The petition of the New York Central and Hudson River Railroad Company respectfully shows:

I. This petitioner, The New York Central and Hudson River Railroad Company, is a domestic railroad corporation, having but one kind of capital stock, organized and existing under the laws of the State of New York, for steam surface railroad purposes, and is engaged in operating certain railroads owned or leased in the State of New York, and certain railroads leased in other States, and was such railroad corporation during the year ending October 31, 1900.

II. The defendant, Nathan L. Miller, is and has been since December 30, 1901, the comptroller of the State of New York.

105 III. That on or before November fifteenth, 1900, this petitioner duly made a written report to the comptroller of the State of New York, as required by subdivision 1 of section 189 of

the tax law of the State of New York, being chapter 908 of the Laws of 1896 of the State of New York.

IV. That the said report showed the condition of this petitioner at the close of its business on October 31st preceding, and stated the amount of its authorized capital stock to be $115,000,000; that the amount of stock paid in up to April 1, 1900, was $100,000,000; that the amount of stock paid in on and after April 1, 1900, was $115,000,000; that the year ending with said 31st day of October was as follows: January 15, April 16, July 16, October 15, 1900; that the rate per centum of each of said dividends was five per centum; that such dividends amounted to less than six per centum on the par value of the capital stock of this petitioner; that the entire amount of the capital of such corporation, this petitioner, was $338,897,656.69; and that the capital employed by such corporation, this petitioner, in this State during the year ending said October 31, 1900, was $204,587,574.76; and that the capital employed by such corporation, this petitioner, outside of the State of New York, during such year was $134,310,081.93; that is, the proportion or percentage of capital employed by it within the State was sixty and thirty-seven one hundredths (60 37–100) per cent. of the entire amount of its capital and the proportion or percentage of capital employed by it outside of this State was thirty-nine and sixty-three one-hundredths (39 63–100) per cent. of the entire amount of its capital; and that, therefore, from November 1, 1899, to March 31, 1900, both inclusive, $60,370,000 was such portion of the capital stock at par of such corporation, this petitioner, as the amount of capital employed
106 within this State bears to the entire capital of the corporation; and that from April 1, 1900, to October 31, 1900, both inclusive, $69,425,500 was such portion of the capital stock at par of such corporation, this petitioner, as the amount of capital employed within this State bore to the entire capital of the corporation.

V. That subsequent to the said fifteenth day of November, 1900, the said comptroller audited and stated the account for taxes to be paid by this petitioner under section 182 of the tax law, and sent notice thereof to this petitioner.

VI. That the account so audited and stated was in the words and figures following, to wit:

"COMPTROLLER'S OFFICE, ALBANY, N. Y.

The N. Y. Central & H. R. R. R. Co., Grand Central Station, N. Y. City.

G. S. Prince in Account with the State of New York, Dr.

For tax on franchise or business, based on value of capital stock employed in New York State, per chapter 908, Laws of 1896, and acts amendatory thereof, for the year ending October 31, 1900, as per report filed.....	
Appraised value of capital stock, $106,000,000, tax 1½ mills.....	$159,000.00

78 Defendant's Notice of Appeal to Court of Appeals.

Supreme Court, County of Albany, State of New York.

PEOPLE *ex Rel.* NEW YORK CENTRAL & HUDSON RIVER RAILroad Company, Plaintiff,
against
ERASTUS C. KNIGHT, as Comptroller of the State of New York, Defendant.

GENTLEMEN: Please take notice that the defendant in the above-entitled action appeals to the court of appeals from the order of the appellate division, third department, and also from the judgment therein entered in the clerk's office of the county of Albany on the 20th day of September, 1902, in favor of relator, against the said defendant, modifying the determination of the comptroller herein and reducing relator's taxes by $29,011.07, with interest, and for $199.25 costs and disbursements and from the whole of said order and judgment.

Dated at Albany, N. Y., September 29, 1902.

Yours, &c.,
JOHN C. DAVIES,
Attorney-General, Attorney for Defendant,
Capitol, Albany, N. Y.

To the clerk of the county of Albany, Ira A. Place, Esq., attorney for the relator, 417 Grand Central station, N. Y. city.

79 Relator's Notice of Appeal to Court of Appeals.

Supreme Court, County of Albany.

THE PEOPLE OF THE STATE OF NEW YORK upon the Relation of the New York Central and Hudson River Railroad Company, Relator,
against
ERASTUS C. KNIGHT, as Comptroller of the State of New York, Respondent.
Notice of Appeal to Court of Appeals.

SIRS: Please take notice, that the relator in the above-entitled action hereby appeals to the court of appeals from the order of the appellate division of the supreme court, third department, and also from the judgment of said appellate division thereon, entered herein in the clerk's office of the county of Albany, on the 20th day of September, 1902, and from each and every part of said order and judgment.

Dated New York, October 18, 1902.

Yours, &c.,
IRA A. PLACE,
Attorney for Relator, Room 417, Grand Central Station,
Borough of Manhattan, New York City, N. Y.

To John C. Davies, Esq., attorney for respondent, capitol Albany, N. Y., and clerk of the county of Albany, Albany, N. Y.

80 Stipulation.

In the Court of Appeals.

THE PEOPLE OF THE STATE OF NEW YORK upon the Relation of the New York Central and Hudson River Railroad Company, Appellant and Respondent,
against
ERASTUS C. KNIGHT, as Comptroller of the State of New York, Respondent and Appellant.

Stipulation under Sections 3301 and 1353 of the Code of Civil Procedure.

It is hereby stipulated, under section 3301 of the Code of Civil Procedure, that the foregoing are true copies of the notices of appeal, the order and judgment appealed from and the papers upon which the court below acted in making said order and judgment, on file in the office of the clerk of Albany county, and certification thereof, as required by section 1353 of the Code of Civil Procedure, is hereby waived.

Dated borough of Manhattan, New York city, October 20, 1902.

IRA A. PLACE,
Attorney for Appellant-Respondent.
JOHN C. DAVIES,
Attorney-General, Attorney for Respondent-Appellant.

81 At a special term of the supreme court of the State of New York, held at the city hall, in the city of Albany, N. Y., on the 14th day of February, 1903, for the county of Albany.

Present: Hon. D. Cady Herrick, justice.

THE PEOPLE OF THE STATE OF NEW YORK upon the Relation of the New York Central and Hudson River Railroad Company
vs.
ERASTUS C. KNIGHT, as Comptroller of the State of New York.

The above entitled cause having been taken to the court of appeals from an order and judgment of the appellate division, third department, entered and filed in the office of the clerk of the county of Albany on the 20th day of September, 1902, modifying the determination of the comptroller of the State of New York, settling a tax against the relator, for the year ending October 31, 1900, in the sum of one hundred fifty-nine thousand dollars, and further ordering that the said comptroller's account therefor be corrected and restated by him, and that the said tax be reduced by the sum of $29,011.07, with interest from the date of the deposit thereof by the relator with the State treasurer, and for costs in favor of the relator in the sum of $199.25; and the said court of appeals having rendered judgment

the State, $220,259,566.51. The statement would thus be x : 141,171,093.75 : : 220,259,566.51 : 337,760,785.52.

Under this statement x $92,060,076.91, the amount to be assessed at one and one-half mills, which amounts to $138,090.11.

In view of the fact that there is no express finding by the comptroller that none of the relator's rolling stock was used exclusively outside of the State, I think it advisable that the proceedings should be remitted to the comptroller, to the end that further evidence may be taken upon the subject in case it should be claimed that some portion of the relator's rolling stock was used continuously outside of the State, and if it should be found that such was the fact, the amount thereof should be deducted and the order of the appellate division and that of the comptroller should be modified accordingly."

That the said judgment of the court of appeals was on the 14th day of February, 1903, in and by the order and judgment of the supreme court of the State of New York, at a special term thereof held in and for the county of Albany, made the judgment of that court and duly entered as such.

That upon the application of this petitioner the comptroller of the State of New York on February 14, 1903, fixed February
111 19, 1903, as the day of and for the re-hearing of petitioner's application for the revision and readjustment of so much of the said tax as was based upon the equipment of petitioner continuously employed outside this State during said tax year in pursuance of the said judgment of the court of appeals in that behalf; that on the 19th day of February, 1903, the applicant, this petitioner, appeared by its counsel before the Honorable Otto Kelsey, the deputy comptroller, representing the said comptroller of the State of New York, and gave testimony in support of the said application, whereby, upon the said hearing, it appeared that the item "Cost of road and equipment $181,304,316.21" shown in and upon the report made by said applicant, this petitioner, to the comptroller of the State of New York for the said tax year ending October 31, 1900, embraced and included the cost of its total equipment, to wit, $44,238,069.25.

That the road mileage operated by said applicant, this petitioner, and upon which it employed such and so much of its equipment as it did employ during said tax year, was 2,828.68 miles, of which 2,483.61 miles, or 87.80% of the total road mileage was situate within the State of New York, and 345.07 miles, or 12.20% of the total road mileage was situate outside the State of New York. That by the said evidence upon the said hearing it further appeared that the said $44,238,069.25 cost of total equipment embraced and included $27,911,210.90 cost of freight cars, and that the said freight cars were not employed or used solely by petitioner, or solely upon its road and other railroads commonly known as New York Central lines or Vanderbilt lines; that whereas the total car mileage of petitioner's said freight cars during said tax year was 540,074,721 miles only, and no more than 363,563,540 miles thereof, or

67.32% of the said total mileage thereof was within the State
112 of New York, or upon so called New York Central lines or Vanderbilt lines within and outside the State of New York, that is to say upon lines of railroad of or in any wise controlled by said applicant, this petitioner, and 176,511,181 miles of the said total car mileage, or 32.68 % thereof, was employed and used by other railroad companies upon their roads outside the State of New York, and other than the railroads in anywise controlled by applicant, this petitioner, and thus used in and about the local and interchange business and traffic of said outside and foreign railroad companies distinct from and disconnected with the business and traffic of and with the applicant, this petitioner, wherein and whereby $9,121,383.72 of the said $44,238,069.25 total equipment was continuously employed and used by others than the applicant, this petitioner, and upon roads entirely outside of the State of New York, and roads in no wise controlled by the applicant, and in and about business and traffic distinct from the business and traffic of the applicant, this petitioner,

and that of the balance, viz: $35,116,685.53 of said total equipment, 12.20 %, to-wit $4,284,235.64, was as aforesaid employed and used by the applicant, this petitioner, upon its said road mileage outside of the State of New York, and thus it appeared that the basis and sum of credit to which the applicant, this petitioner, was entitled, conformable to the said direction of the court of appeals, was the following, to wit:

Computation on basis adopted by the court of appeals: x : 141,171,093.75 : : 220,259,566.51 : 337,760,785.52.

Under this statement x = $92,060,076.91, the amount to be assessed at one and one-half mills, which amounts to $138,090.11.

Computation on basis of $27,911,210.90 total freight cars, of
113 which 32.68 %, viz., $9,121,383.72 was employed by others than petitioner, and on other than Vanderbilt lines, and entirely outside N. Y. State; and $44,238,069.25 total equipment, less $9,121,383.72, as above, viz: $35,116,685.53, of which 12.20 %, viz: $4,284,235.64, was employed by petitioner on its road mileage outside N. Y. State; total equipment continuously employed outside N. Y. State, $13,405,619.36.

The statement would thus be: x : 141,171,093.75 : : 206,853,947.15 : 337,760,785.52.

Under this statement x = $86,457,043.62, the amount to be assessed at one and one-half mills, which amounts to $129,685.57. Entitling petitioner to credit of the difference between $138,090.11 and $129,685.57, viz: $8,404.54, and this applicant was accordingly entitled to a resettlement of the said tax and credit of the said sum of $8,404.54 in respect and on account thereof.

That thereafter the said comptroller made his determination, and sent written notice of his determination upon said application to the applicant, this petitioner, the said determination being as follows:

114 "STATE OF NEW YORK, COMPTROLLER'S OFFICE,
ALBANY, April 23, 1903.

In the Matter of THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* N. Y. C. & H. R. R. R. Co., Appellant-Respondent,
vs.
ERASTUS C. KNIGHT, as Comptroller of the State of New York, Respondent and Appellant.

The proceedings in the above-entitled action having been, by order of the court of appeals, dated January 13, 1903, remitted to the comptroller to take evidence and determine as to whether any portion of the relator's rolling stock was during the year in question exclusively or continuously without the State of New York, and testimony having been submitted upon said question and due consideration having been given thereto, it is hereby found and determined that none of the rolling stock of the relator, the said N. Y. C. & H. R. R. R. Co., was, during the year in question, continuously or exclusively employed without the State of New York, and that the said relator is not entitled to any deduction from the amount found assessable by said judgment of the court of appeals, on
115 account of the employment of any rolling stock outside the State of New York during the year in question.

NATHAN L. MILLER,
Comptroller.

The N. Y. C. & H. R. R. R. Co., New York Central station, New York city."

That the said petitioner then insisted, and ever since has insisted and now insists that the said sum of $8,405.54 of the said tax based upon so much of petitioner's capital as is represented in and by the said $13,405,619.36 of its assets, to wit, equipment in manner aforesaid continuously employed outside this State, was unlawfully and erroneously assessed or imposed, and that payment thereof could not and cannot be lawfully demanded, and that under and in pursuance of the said judgment and remittitur of the court of appeals, and the applicant's, this petitioner's, right in the premises, it was entitled to have the said account further resettled by striking therefrom or crediting to the account of the said petitioner the said sum of $8,404.54.

IX. That heretofore this petitioner duly deposited with the treasurer of the State of New York the full amount of the taxes, percentage, interest and other charges audited and stated in the said account, and duly filed an undertaking with the said comptroller in an amount and with sureties approved by a justice of the supreme court of the State of New York, to the effect that if the said writ is dismissed, or the said determination is confirmed, this petitioner will pay any and all charges and costs which may accrue against it

in the prosecution of the writ, including costs of all appeals, a copy of such undertaking being hereto annexed, and marked "Exhibit A."

116 X. That your petitioner is aggrieved by the said determination of the said comptroller. That no previous application for this writ has been made to any court or judge.

Wherefore, your petitioner, desiring to review both upon the law and the facts said determination of the said comptroller, upon such application made to him by your petitioner for a revision and resettlement of the said account as hereinabove set forth, prays that a writ of certiorari may issue out of the supreme court of the State of New York, directed to the said comptroller of the State of New York, commanding the said comptroller to certify and return at the office of the clerk of Albany county all and singular the evidence b[illegible] him on such application, and all the proceedings thereon, and [illegible] his decisions and actions in the premises, with all the evidence, documents, reports, records and papers relating thereto in his possession or under his control, submitted to or considered by him, concerning the said account and the grounds for his refusal to revise and readjust the same, to the end that his said decisions and determinations may be reviewed and the said original and resettled account be corrected and restated, and that this petitioner have such other and further relief as may be proper.

Dated New York, June 10, 1903.

THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
By E. V. W. ROSSITER, First Vice President.

IRA A. PLACE,
Attorney for Petitioner, Grand Central Station,
Borough of Manhattan, N. Y. City, N. Y.

117 STATE OF NEW YORK, }
County of New York, } ss.:

Edward L. Rossiter, being duly sworn, says that he is an officer of The New York Central and Hudson River Railroad Company, the petitioner above named, to wit: the first vice president thereof; that the foregoing petition is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

E. L. ROSSITER.

Sworn to before me this 10th day of June, 1903.

JOHN A. MATTISON,
Notary Public, N. Y. County.

EXHIBIT A.

Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK upon the Relation of the New York Central and Hudson River Railroad Company
against
NATHAN L. MILLER, as Comptroller of the State of New York.

Whereas, the above named, The New York Central and
118 Hudson River Railroad Company, heretofore on February 14, 1903, applied to the comptroller of the State of New York to revise and readjust the account heretofore audited and stated by the said comptroller, imposing an annual tax upon the said The New York Central and Hudson River Railroad Company for the year ending October 31st, 1900, under section 182 of the tax law, and to have the said account, under authority of the remittitur of the court of appeals in such behalf, restated by striking therefrom, or by crediting to the account of said railroad company the sum of eight thousand four hundred and four and 54/100 ($8,404.54) dollars, and the said comptroller having thereafter, a hearing having been made upon the said application, made his determination, declining to make any revision or readjustment of the said account; and

Whereas, the said The New York Central and Hudson River Railroad Company is dissatisfied and aggrieved by the said determination and intends to review the same by writ of certiorari, and desires to file an undertaking with the said comptroller, as required by section 197 of the tax law,

Now, therefore, the National Surety Company, a corporation duly authorized by the laws of the State of New York to execute surety bonds, having an office and principal place of business at No. 346 Broadway, borough of Manhattan, city of New York, New York, does hereby undertake that if the said writ of certiorari, which may be granted upon the application of the said The New York Central and Hudson River Railroad Company, to review the said determination, be dismissed, or the determination of the comptroller be confirmed, the said The New York Central and Hudson River Railroad Company will pay all the costs and charges which may accrue against it in the prosecution of the said writ, including the
119 cost of all appeals, not exceeding the sum of five hundred ($500) dollars.

Dated New York, June 10, 1903.

NATIONAL SURETY COMPANY,
[SEAL.] By ROBERT M. NUGENT,
Res. Vice-President.

Attest:
RICHARD J. MORIARTY,
Res. Ass't Secretary.

STATE OF NEW YORK, }
County of New York, } ss.:

On this 10th day of June, 1903, before me personally appeared Robert M. Nugent, res. vice-president of the National Surety Company, with whom I am personally acquainted, who, being by me duly sworn, said that he resides in the county of New York; that he is the res. vice-president of the National Surety Company, the corporation described in, and which executed the within instrument; that he knows the corporate seal of said company; that the seal affixed to the within instrument is such corporate seal; that it was affixed by order of the board of directors of said company; and that he signed said instrument as res. vice-president of said company by like authority; and that the liabilities of said company do not exceed its assets, as ascertained in the manner provided in section 3, chapter 720, of New York Session Laws of 1893. And the said Robert M. Nugent further said that he is acquainted with Richard J. Moriarty, and knows him to be the res. ass't secretary of said company; that the signature of Richard J. Moriarty, subscribed to the said instrument, is in the genuine handwriting of the said Richard J. Moriarty, and was thereto subscribed by the like order
120 of the said board of directors, and in the presence of him, the said Robert M. Nugent, res. vice-president.

[SEAL.] EDITH BALDWIN,
Notary Public for County of Kings, No. 122.

Certificate filed in New York, Westchester, and Richmond counties.

Copy of By-Law.

Be it remembered, that at a regular meeting of the board of directors, of the National Surety Company, duly called and held on the 6th day of February, 1900, a quorum being present, the following by-law was adopted:

"ARTICLE XIII, SEC. 1. Signatures required.—All bonds, recog-
"nizances, contracts of indemnity and other writings obligatory in
"the nature thereof, shall be signed by the president, the vice-presi-
"dent, the second vice-president, a resident vice-president, or an
"attorney in fact, and, except when signed by an attorney in fact,
"shall have the seal of the company affixed thereto, duly attested
"by the secretary, an assistant secretary, or a resident assistant sec-
"retary. The vice-president, second vice-president, and resident
"vice-presidents shall each have authority to sign such instruments
"whether the president be absent or incapacitated or not; and the
"assistant secretaries and resident assistant secretaries shall each
"have authority to seal and attest such instruments, whether the
"secretary be absent or incapacitated or not. All such instruments

"executed as herein provided shall be as binding upon the company "as if the same were signed by the president, duly sealed and attested "by the secretary."

121 STATE OF NEW YORK, County of New York, } ss.:

I, Richard J. Moriarty, res. ass't secretary of the National Surety Company, have compared the foregoing copy of by-law with the original thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original by-law.

Given under my hand and seal of the company, in the city of New York, county of New York, this 10th day of June, 1903.

[SEAL.] RICHARD J. MORIARTY,
Res. Ass't Secretary.

122 Return to Writ of Certiorari.

Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK upon the Relation of the New York Central and Hudson River Railroad Company, Relator,

vs.

NATHAN L. MILLER, as Comptroller of the State of New York, Defendant.

The comptroller of the State of New York hereby makes return to the writ of certiorari issued herein June 13, 1903, as follows:

1st. He admits the allegations contained in paragraphs I., II., III., V., VI., and IX. of the petition herein.

2d. He also admits that on or about the 30th day of January, 1901, the relator applied for a revision and readjustment of the account stated against it by said comptroller, and that such application was granted and a rehearing thereon had on or about the 15th of July, 1901.

He also admits that thereafter the comptroller made his decision, as stated in paragraph VII. of the petition herein, and that upon the petition of this petitioner to the supreme court of the State of New York the determination of the comptroller was ordered
123 to be and in pursuance of said order was duly certified to the court, and in due course reviewed and determination thereon had by this court, and by said appellate division an order was made modifying the determination of the comptroller, and correcting and restating the account of the relator, from which order and judgment entered thereon appeals were taken to the court of appeals by the relator, and also by the defendant, and the said court of appeals, in the opinions of Judges Haight and O'Brien, reported at 173 N. Y.

Reports, pages 255 *et seq.*, advised the modification of the order and judgment of the appellate division, but finally made its order as follows, contained in the wording of the opinion of Haight, J., the statement within brackets being mine:

"It seems to me, therefore, that, under a fair and reasonable construction of the statute, this item (for rolling stock of relator at times but not continuously without the State of New York) should have been included as capital employed within this State.

"Under the findings of the court below, as we understand them, the average amount of the relator's capital stock during the year was $108,750,000; the average price was $129.8125, making the average cash value of the relator's capital stock for the year $141,171,093.75. The entire amount of the relator's total assets was $337,760,785.52, and the portion of such assets, as used in this State, $205,029,380.45, to which sum should be added the relator's rolling stock, $15,230,186.06, making the total assets used within the State $220,259,566.51. The statement would thus be

x : 141,171,093.75 : : 220,259,566.51 : 337,760,785.52.

Under this statement x = $92,060,076.91, the amount to be
124 assessed at one and one-half mills, which amounts to $138,090.11.

In view of the fact that there is no express finding by the comptroller that none of the relator's rolling stock was used exclusively outside of the State, I think it advisable that the proceedings should be remitted to the comptroller, to the end that further evidence may be taken upon that subject in case it should be claimed that some portion of relator's rolling stock was used continuously outside of the State; and if it should be found that such was the fact, the amount thereof should be deducted and the order of the appellate division and that of the comptroller should be modified accordingly, without costs to either party."

He further admits that the said judgment of the court of appeals was, on the 14th day of February, 1903, in and by the order and judgment of the supreme court of the State of New York, at a special term held in and for the county of Albany, made the judgment of that court, and duly entered as such.

He further admits that on or about the 14th day of February, 1903, the relator applied for a rehearing of its application for a revision and readjustment of its account by the comptroller, to take evidence and determine as to whether or not any portion of the relator's rolling stock was during the year ending October 31, 1900, exclusively or continuously without the State of New York, and such application was granted and a rehearing thereon had on or about February 19, 1903.

He also admits that thereafter the comptroller made his decision thereon, as stated in paragraph VIII. of the petition herein.

3d. Making further return to the said writ the comptroller
125 does not admit any of the allegations of the petition herein, except those herein expressly admitted or shown by this return.

4th. He further returns that said account and determination are in all things legally and properly stated and made and that the relator is not aggrieved thereby.

5th. Annexed hereto and made a part hereof are all the papers and proceedings before the comptroller in stating such account and making such determination, other than those set out in the petition herein.

In witness whereof, I have hereunto set my hand and official seal this 6th day of July, 1903.

OTTO KELSEY,
Deputy Comptroller.

[L. S.]

126 STATE OF NEW YORK:

Comptroller's Office.

In the Matter of the Application of THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY for Revision and Readjustment of Taxes Assessed under the Provisions of Chapter 908, Laws of 1896, and the Acts Amendatory Thereof for the Year 1900.

Rehearing held at the office of the State comptroller, February 19th, 1903, before Hon. Otto Kelsey, deputy State comptroller.

Appearances.

Thomas Emery, as counsel.

F. H. MEEDER appeared, and being duly sworn, testified as follows:

By Mr. EMERY: Mr. Meeder, you may state where you live, where, how employed, and in what capacity?

A. Live in South Orange, New Jersey; employed as chief clerk in the office of the auditor of the New York Central and Hudson River Railroad Company.

Q. At the Grand Central station in New York city?

A. Yes, sir.

Q. Had you to do with the making up of the computations
127 and figures for the return of the capital employed by the company in this State for the year ending October 31st, 1900?

A. Yes, sir.

Q. And in that capacity were you and are you familiar with the manner and place of use and employment of the rolling stock and equipment of the company?

A. Yes, sir.

Statement offered in evidence.

Objected to by Mr. Merrill in the form in which it is as incompetent.

By COUNSEL: I would suggest that it be identified, and I ask the preliminary questions.

Mr. MERRILL: Objected to on the general ground that under the remittitur the comptroller is only authorized to take into consideration evidence which shows the value of the rolling stock of the New York Central and Hudson River Railroad Company which is continuously and permanently without the State of New York and not to consider any testimony with relation to wheelage basis or mileage basis.

Statement received and marked Exhibit A, for identification.

Q. Did you make up the computations and statements shown upon the paper Exhibit A for identification, or were they made under your supervision?

A. Yes, sir.

Q. And what have you to say as to the correctness or incorrectness of the statements and figures as therein contained?

A. I believe that the division of the valuation of the company's equipment is a correct one, using the company's road mileage in and out of New York State as a basis.

Q. That is, do you or do you not mean the road mileage operated by the New York Central and Hudson River Railroad Company directly?

A. I mean such mileage operated directly.

Exhibit A for identification offered in evidence.

128 Objected to by Mr. Merrill on the ground that it is not permissible and is incompetent under the remittitur.

By COUNSEL: I will state ground under which I deem it to be receivable, admissible and proper to be received, even though Mr. Merrill were technically and absolutely correct; that is, referring to the opinion which comes down with the remit-ittur, it shows substantially this state of affairs; the opinion shows that the view which the court has of the record as it stood was that the use of the company's rolling stock outside of the State, off of its own road, consisted merely of the accomplishment of the shipment upon which the company started the car to and upon their so-called Vanderbilt or New York Central lines, to wit—the Lake Shore, Michican Central, the Big Four, popularly called, and thereupon the cars were forthwith or presently reloaded and returned to the New York Central Company upon its line. Now, upon that view the court conceived that these cars were to be regarded as stock employed within New York State within the meaning of the statute. Now, in that connection no showing was made of the fact that any part of the company's line was operated—mileage was outside of the State of New York—nor was there any showing in that case either one way or the other that this rolling stock went in these Vanderbilt lines and was held off it. In view of that condition of affairs we offer this in evidence to show what the actual state of affairs was.

By Mr. KELSEY:

Q. That is to determine how much outside and how much in?

A. That is to be regarded how much employed outside of
129 the State and how much inside the State and for that purpose we offer this paper showing division of equipment of the company, showing first the total valuation of the equipment of the company in its various classifications and then the proportion of that value divided as per road mileage operated by the company within and outside the State.

Mr. MERRILL: It is contended that under the order of the court the only thing that we can take into consideration is the cars which are actually and permanently and continuously without the State. They are to be accepted as property without the State and otherwise than that they are to be construed as within the State. There is no ground, I insist, under the remittitur for taking a wheelage basis which the court distinctly turned down in the case which it had before it; if there is no ground for taking wheelage basis there is substantially the same reason why a mileage basis should be accepted. The wording of the remittitur in relation to this is as follows—"In view of the fact that there is no express finding by the comptroller that none of the relator's rolling stock was used exclusively outside of the State, I think it advisable that the proceedings should be remitted to the comptroller, to the end that further evidence may be taken upon the subject in case it should be claimed that some portion of the relator's rolling stock was used continuously outside of the State, and if it should be found that such was the fact, the amount thereof should be deducted and the order of the appellate division and that of the comptroller should be modified accordingly, without costs to either party."

Now, Mr. Comptroller, I contend that under this remittitur
130 the only evidence which the comptroller is authorized to take in this matter is such as is in harmony with and along the lines indicated in the words quoted; that is, such evidence that will show what the value was of the rolling stock of the New — Central and Hudson River Railroad Company, and that was used exclusively and continuously outside of the State of New York during the year in question.

By COUNSEL: My claim is, that viewing the remittitur in the line of the opinion, that this is what fairly tends to establish those facts regarding the words continuously out of the State in their reasonable and ordinary sense, and so we offer that for the purpose of showing that, in view of this road mileage being the proportion shown without the State, that that proportion of equipment is to be regarded as having its situs without the State and being continuously without the State within the fair meaning of the statute prescribing this tax.

Mr. MERRILL: It is contended further on the part of the comptroller that all the evidence was before the court, and the comptroller in the case decided by the court and concerning which this remittitur was handed down, showing the wheelage of these cars without the

State and within the State, and it is contended that the mileage basis is no more just than the wheelage basis, and they wouldn't, either one of them, determine fairly what cars were exclusively and continuously without the State.

By COUNSEL: I submit statement of equipment for October 31st, 1900.

Exhibit A for identification is received as Exhibit A, conditionally, the comptroller reserving the right to exclude it as evidence.

131 Q. Now, Mr. Meeder, the same year for the mileage basis off the Vanderbilt lines?

Statement produced, offered in evidence and marked Exhibit B for identification.

Q. Now, Mr. Meeder, examine the paper marked Exhibit B for identification, and state whether it was prepared and made up by you, or under your supervision and direction?

A. This statement was prepared under my direction and supervision.

Q. And what have you to state as to its correctness as to statements and computations?

A. I believe the computations as shown upon this exhibit to be correct.

Q. And the statements contained in it to which the computations refer?

A. Yes, sir.

Statement offered in evidence.

Objected to on the ground that it is incompetent, irrelevant and immaterial, and cannot be entertained under the conditions of the remittitur.

By COUNSEL: I claim for this that it exhibits the proportion of the rolling stock of the company that was continuously employed both outside the State of New York and off the New York Central lines and the lines controlled by the New York Central.

Mr. MERRILL: I object to it on the ground that it doesn't show anything of that character, but shows the result of a computation, which in result is how many miles of road cars were operated on outside of New York State and how many miles of road cars are operated on in New York State, and how many cars during the year were on those two divisions of mileage.

By COUNSEL:

Q. Mr. Meeder, in this statement marked Exhibit B for identification, Mr. Meeder, the terms Vanderbilt lines are used—please
132 state to what roads those words have reference?

A. The Lake Shore and Michigan Southern railway, the Michigan Central railroad, Cleveland, Cincinnati, Chicago and St. Louis railway, Lake Erie & Western R. R.; N. Y., Chicago & St.

(Return this bill to the comptroller, with draft or check payable to State treasurer.)

The tax specified is due and payable January 15th, 1901. Interest attaches after that date."

VII. That on or about the 30th day of January, 1901, and
107 within one year from the time that the said account had been audited and stated, and notice thereof sent to this petitioner, this petitioner applied to the said comptroller to revise and readjust the said account and to have said account resettled by striking therefrom, or by crediting to the account of this petitioner, the sum of $60,521.46; that the said application was made by written petition, duly verified on or about the 30th day of January, 1901, and entitled, "In the matter of the application of the New York Central and Hudson River Railroad Company for a revision and readjustment of the account heretofore audited and stated by the comptroller of the State of New York for taxes under section 182 of the tax law, for the year ending October 31st, 1900;" that upon such application said comptroller, on or about the 5th day of April, 1901, granted a rehearing, and fixed the first day of May, 1901, as the day upon which the petitioner might be heard upon such application; that said hearing was duly adjourned to the 15th day of July, 1901; that on the said 15th day of July, 1901, this petitioner duly appeared by its counsel before the Honorable Willis E. Merriman, the deputy comptroller, representing the said comptroller, and gave testimony in support of the said application; that upon said hearing it appeared from the revised and corrected figures that of the said sum of $338,897,656.69, this petitioner, as aforesaid, $205,029,380.45 was capital employed by it within this State during such year, and $133,868,276.24 was capital employed by it outside of this State during such year; that is, the proportion of percentage of capital employed by it in this State was sixty and fifty one-hundredths (60 50-100) per cent. of the entire amount of its capital, and the proportion of percentage of capital employed by it outside of this State was thirty-nine and fifty one-hundredths (39 50-100) per cent. of the entire
108 amount of its capital; and that therefore from November 1, 1899, to March 31, 1900, both inclusive, $60,500,000 was such portion of the capital stock at par of such corporation, this petitioner, as the amount of the capital employed within this State bore to the entire capital of said corporation; and that from April 1, 1900, to October 31, 1900, both inclusive, $69,575,000 was such portion of the capital stock at par of such corporation, this petitioner, as the amount of capital employed within this State bore to the entire capital of the corporation; that thereafter the said comptroller made his determination and sent written notice of his determination upon said application to the applicant, this petitioner, the said determination being as follows:

STATE OF NEW YORK:

COMPTROLLER'S OFFICE,
ALBANY, Sept. 13, 1901.

In the Matter of the Application of THE NEW YORK CENTRAL & H. R. R. R. COMPANY for a Revision and Readjustment of Taxes Assessed against it under the Provisions of Chap. 908, Laws of N. Y. 1896, and the Several Acts Amendatory Thereof.

An application having been made by the above-named New York Central & Hudson River R. R. Company for a revision and resettlement of the taxes assessed and determined against it by the
109 comptroller of the State of New York for the one year ending Oct. 31, 1900, and the said comptroller having heard proofs offered on behalf of the said New York Central & Hudson River R. R. Company in support of said application, and after due consideration thereof, the comptroller does determine that the assessment heretofore made against the said New York Central & Hudson River R. R. Co., does not include taxes which could not have been lawfully demanded. and therefore declines to make any revision of readjustment of the same.

THEO. P. GILMAN,
Deputy Comptroller."

VIII. That upon the petition of this petitioner to the supreme court of the State of New York, setting forth, *inter alia*, the aforementioned facts, the said determination of the said comptroller of the State of New York was ordered to be and in pursuance of said order was duly certified to this court and in due course reviewed and determination thereon had by this court in and by the appellate division thereof held in and for the third judicial department of said State and its order modifying and as modified affirming the said determination of the said State comptroller duly entered, from which as well this petitioner as also the said comptroller of the State of New York appealed to the court of appeals of said State.

That upon and by the court of appeals hearing and determination of the said appeal that court adjudged revision and readjustment of the said tax save and except that as to and concerning so much of the said revised and readjusted tax as was based upon the equipment of petitioner employed, respectively, within or outside of this State, it was ordered as follows:

"Under the findings of the court below, as we understand
110 them, the average amount of the relator's capital stock during the year was $108,750,000; the average price was $1.298,125, making the average cash value of the relator's capital stock for the year $141,171,093.75. The entire amount of the relator's total assets was $337,760,785.52, and the portion of such assets as used in this State $205,029,380.45, to which sum should be added the relator's rolling stock, $15,230,186.06, making the total assets used within

COUNSEL: I now offer Exhibit C for identification as Exhibit C.

Objected to by Mr. Merrill as immaterial, incompetent and irrelevant.

Excluded. Exception taken.

COUNSEL: In the light of this further evidence I now renew the offer of Exhibit B for identification, to be included as Exhibit B.

Same objection.

Excluded. Exception taken.

Mr. MERRILL: This Exhibit B for identification is also objected to, further, on the ground that it shows exactly the same method of procedure that was before the court in relation to rolling stock before; that is to say, wheelage, and which was rejected by the court.

By COUNSEL: In response to that the applicant's contention is that the paper is not subject to the objection interposed, because it was not merely the wheelage basis that the court treated as objectionable, but the wheelage basis which it deemed to be involved in the mere shipment from the New York Central railroad proper to points on their lines known as Vanderbilt lines, and then reloading the
136 car back from such so-called Vanderbilt lines to the New York Central, whereas this division of mileage entirely discards the thing that the court thus treated as objectionable. That is to say, we are here claiming as exempt the proportion used on other than Vanderbilt lines, which ground of exemption was not brought before the court at all, so it could not have been passed upon by them.

Mr. MERRILL:

Q. Mr. Meeder, isn't it a fact that during all the time that cars of the New York Central Railroad Company and which were in transit out of the State on other lines, that there were cars of other lines also in the hands of the New York Central Railroad Company in the State of New York?

COUNSEL: I object to that inquiry upon the ground that it is irrelevant, immaterial and incompetent, because we are taxable on our capital employed in the State and not on capital of other companies.

Mr. MERRILL: I think this is pertinent in showing that the New York Central railroad had in lieu of its own property outside of the State property of other companies and had in use their property as though it were its own.

Objection sustained.

Mr. MERRILL: Mr. Comptroller, I want to state that the purpose of making this inquiry was to show that such a condition of affairs did exist.

Mr. MERRILL:

Q. Mr. Meeder, is it not a fact that on much of the mileage of the New York Central Railroad Company in New York State there was

more cars employed per mile than there is upon the mileage
137 of the roads located without the State proportionately?

A. I am not prepared to answer that question positively from my own knowledge.

Q. Mr. Meeder, is it not a fact that upon a wheelage basis a car operated outside the State of New York would wheel many more miles upon the average than it would in doing business that was local to the State of New York?

A. Not necessarily.

Q. Isn't it a fact, whether it was necessarily so or not? For instance, a car loaded at New York city with a car-load of eggs to go to Chicago, even if that car were returned loaded immediately, would travel several times as many miles in going from New York to Chicago and back again outside of the State as it would within the State?

A. Not if it went by the Lake Shore road, for example; it would make about half the distance in New York State and half the distance out.

Q. Suppose the car went still further west, to St. Louis, then?

A. It would make a greater mileage outside of New York provided it returned to New York again.

Q. How did you get the averages in Exhibit B for identification—did you, as a matter of fact, get those by taking a certain number of freight cars, or was it made up generally from the general records of the company and not upon averages?

A. The total freight car mileage shown on Exhibit B, showing the miles run by cars both in and out of New York State, was obtained from the records of the car accountant; the mileage of freight cars outside of New York State on roads other than the Vanderbilt lines was obtained from the same source; the per cent. which this latter figure bears to the former is 32.68; this percentage was applied to the total valuation of the freight cars and gave the result shown on Exhibit B as valuation outside of New York.

138 Q. Now, Mr. Meeder, is it not possible to determine from the records of the New York Central and Hudson River Railroad Company whether there were any cars which did not come into and were not employed by New York Central Railroad Company in New York State during the year in question?

A. If the records of the car accountant are preserved for that period I am of the opinion that it might be determined, but that it would incur a vast amount of labor.

Q. Mr. Meeder, does the New York Central and Hudson River Railroad Company, as a corporation, operate any of these so-called Vanderbilt lines with the State?

A. No, sir.

Q. Are not these corporations, all of them, the possessors of rolling stock of their own?

A. Yes, sir.

Q. Does not the rolling stock of these companies come into State as rolling stock of New York Central goes out of State?

A. Yes, sir; you mean in the same manner?

Q. Yes?

A. Yes.

Q. Mr. Meeder, do you know what the percentage of mileage would have been in this State if, in making the calculation which you made in exhibit for identification, you had taken as out of the State the mileage of freight cars in and out of the State of the so-called Vanderbilt line?

A. You mean——

Q. As a matter of fact, if the Vanderbilt lines located without the State had been treated as other lines without the State are treated in that computation, would not the percentage of mileage of freight cars in New York State have been very much larger?

A. If the mileage of the cars upon the Vanderbilt system, so called, were also considered as out of New York State upon Exhibit B for identification, the percentage of value of cars shown as in New York State would be much less.

Q. Now, what would be the result, taking the same basis
139 of mileage of freight cars outside of New York State?

A. That would be much greater.

Q. Now, Mr. Meeder, in arriving at that conclusion you took into consideration the cars owned by the Lake Shore, Michigan Central and other so-called Vanderbilt lines which were located without the State, did you not?

A. No, sir.

Q. Would that be true absolutely of New York Central and Hudson River Railroad Company's cars?

A. This statement covers only cars owned by New York Central and Hudson River Railroad Company, and no other.

Q. Now, then, will you state for the comptroller what the value was of the locomotives and other rolling stock of the New York Central and Hudson River Railroad Company which was continuously and exclusively without the State of New York?

Objected to by Mr. Emery, because it is incompetent, irrelevant and immaterial, and is calling for the very conclusion that the comptroller is to reach by his determination of this case upon the evidence.

Objection overruled. Exception.

A. I cannot tell from any information I have of the equipment so employed continuously and exclusively outside of the State during the year except upon an average basis.

Q. Would not the records that tell you what the wheelage was also show whether such cars were in or without the State or not?

A. As I have already stated, the car accountant's records if preserved, so far as cars are concerned, would probably show that information.

Q. Those records were in existence when you made up these tabulated statements, were they not?

A. They were, presumably.

Q. If they were not in existence how could you have made up these tabulated statements?

140 A. I am speaking now of the individual car records—records of mileage totals might be in existence whether individual car movement records were or not.

Mr. MERRILL: I think the comptroller will ask you to furnish a statement showing what cars and other rolling stock were continuously and exclusively without the State of New York during the year ending October 31st, 1900.

COUNSEL: Do you mean by that individual cars?

Mr. MERRILL: I mean that the comptroller wants an absolute statement, if it can be determined by the New York Central and Hudson River Railroad Company, as to what cars and other rolling stock it had continuously and exclusively without New York State.

Mr. KELSEY: Is it a fact that every car that the Central owns comes back?

COUNSEL: It comes back when we can get it back; to follow out each individual car would be practically a denial of justice to require any such thing.

By Mr. MERRILL:

Q. Mr. Meeder, do you know whether any of the cars are permanently and exclusively without the State?

A. I have before me a statement which shows the movement of car 14035, which went to the Lake Shore and Michigan Southern railway upon December 20th, 1901, and was continuously off the line of the New York Central until January 4th, 1903, a period of over one year.

Q. Now, Mr. Meeder, have you any way of ascertaining what portion of the rolling stock of the New York Central and Hudson River Railroad Company would be so located all that year, without

141 the State of New York, or of making a fair approximation of it?

A. The labor of following the movement of each individual car would be very great; and I may state as an indication of what that labor means, the going through the records to pick out these individual cases which were picked out at random, consumed several days of laborious tracing through all the car accountant's books.

Q. Were there any other cars picked out except those which you have presented to-day?

A. None other than those which we have here to-day; the fairest approximation I believe to be the car mileage or wheelage basis which shows actual performance of equipment.

Q. Does that show the number continuously and exclusively without the State at all or have any relation to it, Mr. Meeder?

A. These figures do not indicate individual cars, but show simply the total of miles made by the cars.

Mr. KELSEY:

Q. This computation does not take as a basis any number of specific cars that were traced and found absent for any length of time?

A. No, sir; the mileage of cars in and out of the State is arrived at in the following method: We receive from other railroads records of the number of miles made by our cars upon other lines, but they don't give us the number of individual cars. Their reports to us will simply show—Your cars made during the month so-and-so upon our line so many miles; that might be ten or it might be fifty cars. We assemble together all these miles made upon other roads, and then divide that total between the miles made by cars on other roads in New York State and on other roads out of New York State.

By Mr. MERRILL:

Q. Are those cars supposed to be in the course of returning
142 home when they are making that mileage—are they supposed to be?

A. No, sir. It is a notorious fact that many foreign roads—that is, foreign to the New York Central—would seize every available car of other lines they could get for the conduct of their own business, and in many instances that would account for equipment being off the line for any length of time. I may say in connection that the reports of mileage made by foreign roads to the New York Central, that since July 1st last this has been discontinued for what is known as the per diem system; the compensation for use of other than owned cars has been put in effect, and few roads now compute the mileage of cars other than their own.

By COUNSEL: I will now renew offer of this "Exhibit B" for identification, in the light of the cross-examination, and in support of such offer I suggest that it now appears that the evidence offered is the best evidence which the nature of the case, in any fair or reasonable view, demands.

Objected to by Mr. Merrill on the ground that it isn't the evidence to establish the facts called for by the remittitur, and that the evidence submitted in no way shows what, if any, portion of the rolling stock of the New York Central and Hudson River Railroad Company is either continuously, exclusively, or both continuously and exclusively, without the State of New York.

Objection sustained. Exception taken.

143 Report of the New York Central & Hudson River Railroad Company for the Year Ending the Thirty-first Day of October, A. D. 1900, Made Pursuant to Provisions of § 182, Chap. 908, Laws of 1896.

(Give post-office address of company, street and No.)

GRAND CENTRAL STATION, November 30, 1900.

To the comptroller of the State of New York:

Agreeably to law, as treasurer of the above company, I make the following report, viz:

1. This company began business in the State of New York in the month of November, 1869.

2. The last report made by this company to the comptroller of the State of New York under the provisions of the above act was made for the year ending October 31st, 1899.

3. Value of real estate and of interest or interests in real property in New York State, and where situated—Cannot give.

4. Organized under the laws of the State of New York.

5. Date of organization of the company—November 1, 1869.

6. Total authorized capital of company—$115,000,000.

7. Whole number of shares of stock authorized—1,150,000.

8. Number of shares of stock issued—1,150,000.

9. Par value of each share—$100.

10. Amount paid into the treasury of the company on each share—(See answers to Nos. 8 and 9).

11. *a.* Amount of capital paid in cash or property, $—.
b. Amount of capital paid in goodwill, $—.
c. Amount of capital paid in patents or copyrights, $—.
} See answers to Nos. 8 & 9.

144 12. Amount of capital upon which dividends were declared—

$100,000,000 before April 1, 1900.
$115,000,000 after " " "

13. Date of each dividend payable—Jan. 15, Ap'l 16, July 16, Oct. 16, 1900.

14. Amount of each dividend declared—
$1,250,000 Jan. and April.
$1,437,500 July and October.

15. Rate per cent. per annum of dividends—Five per cent.

16. The business transacted by this company in the State of New York for the year ending October 31st, 1900, was as follows, viz: (Give nature of business and how carried on)—Transportation.

17. And such business was carried on at the following named place or places: (Give street and number)—Very numerous places.

18. Capital stock employed in New York State—$60,370,000.

(Preceding line need not be filled out prior to March by companies whose capital is all employed —— 31, 1900, in this State.)

19. If not in New York State, where and how employed—$69,425,500 from April 1, 1900.

20. Highest price of sales of stock during the year aforesaid—139⅛.

21. Lowest price of sales of stock during the year aforesaid—120.

G. S. PRINCE, Treasurer.

STATE OF NEW YORK, }
County of New York, } ss.:

On this fifth day of December, A. D. 1900, personally appeared before me, a notary public in and for the county of New York, George S. Prince, treasurer of the above-named company, who, being duly sworn according to law, did depose and say, that the foregoing report is just, true and correct, according as the accounts stand in the books of the company, and that includes all dividends, whether cash, stock, script, or of any other character or description, declared by said company during the year ending on the thirty-first day of October, A. D. 1900.

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G. S. PRINCE, Treasurer.

Sworn to and subscribed before me, the day and year aforesaid.

J. P. McMAHON,
Notary Public (39), N. Y. Co.

Remarks.

The capital stock employed outside of New York State has been determined by taking such proportion thereof as the assets outside of the State bear to the total assets of the company in and out of New York State, viz: 39⁶³⁄₁₀₀% of $100,000,000 from Nov. 1, 1899, to March 31, 1900; and 39⁶³⁄₁₀₀% of $115,000,000 from April 1, 1900, to October 31, 1900.

Distribution of Assets, October 31st, 1900.

	In New York State.	Outside of New York State.	Total assets.
Cost of road and equipment	$166,074,130.15	$15,230,186.06	$181,304,316.21
Hudson River bridges, Albany	1,905,878.36	.....	1,905,878.36
Advances for lessor companies	5,715,997.91	944,293.07	6,660,290.98
Stocks of other companies	9,055,764.16	117,503,817.73	126,559,581.89
Bonds of other companies	4,080,411.52	.....	4,080,411.52
Cash and cash assets	8,847,030.28	10,000.00	8,857,030.28
Ownership in other lines, real estate, etc.	3,717,033.57	521,785.07	4,238,818.64
Fuel and supplies	3,992,485.63	100,000 00	4,092,485.63
Sinking fund	1,198,843.18	.....	1,198,843.18
	$204,587,574.76 (60 37/100%)	$134,310,081.93 (39 63/100%)	$338,897,656.69 (100%)

146 Lines Leased.

Beech Creek railroad.
Carthage & Adirondack Railway Company.
Carthage, Watertown & Sackets Harbor Railroad Company.
Dunkirk, Allegheny Valley & Pittsburg Railroad Company.
Fall Brook Railway Company.
Gouverneur & Oswegatchie Railroad Company.
Mohawk & Malone Railway Company.
New Jersey Junction Railroad Company.
New York & Harlem Railroad Company.
New York & Putnam Railroad Company.
Niagara Falls Branch Railroad Company.
Oswego & Rome Railroad Company.
Pine Creek Railway Company.
Rome, Waterton & Ogdensburg Railroad Company.
Spuyten Duyvil & Port Morris Railroad Company.
Syracuse, Geneva & Corning Railway Company.
Tivoli Hollow Railroad Company.
Troy & Greenbush Railroad Association.
Utica & Black River Railroad Company.
West Shore Railroad Company.

147 Exhibit A for Identification.

Exhibit A Conditionally.

Equipment, October 31st, 1900.

	In New York State.	Outside New York State.	Total.
Passenger locomotives	$1,566,072.89	$217,623.11	$1,783,796.00
Freight "	6,486,532.30	901,317.70	7,387,850.00
Passenger cars	4,643,650.64	645,245.30	5,288,895.94
Freight "	24,506,043.17	3,405,167.73	27,911,210.90
Work "	267,153.39	37,121.54	304,274.93
Passenger boats	94,845.95	13,179.05	108,025.00
Freight "	1,276,626.47	177,390.01	1,454,016.48
Cost of equipment	$38,841,024.81	$5,397,044.44	$44,238,069.25

Division of equipment based upon road mileage,		
In New York State	2,483.61	87.80%
Outside " " "	345.07	12.20%
Total road mileage	2,828.68	100%

Exhibit B for Identification.

Equipment, October 31st, 1900.

	In New York State.	Outside New York State.	Total.
Passenger locomotives	$1,783,796.00		
Freight "	7,387,850.00		
Passenger cars	5,388,895.94		
Freight cars	18,789,827.18	$9,121,383.72	
Work cars	304,274.93		
Passenger boats	108,025.00		
Freight boats	1,454,016.48		$44,238,069.25
	$35,116,685.53	$9,121,383.72	$44,238,069.25

Division of Freight Equipment Based upon Mileage of Freight Cars Outside of New York State on Roads Other Than Vanderbilt Lines Compared with Total Freight Car Mileage Both in and out of State.

Mileage of freight cars in New York State and out of State, but on Vanderbilt lines	363,563,540	67.32%
Mileage of freight cars outside New York State on roads other than Vanderbilt lines	176,511,181	32.68%
Total freight car mileage	540,074,721	100%

148 EXHIBIT 4 AND EXHIBIT C FOR IDENTIFICATION.

New York Central & Hudson River Railroad Co.

NEW YORK, Jan. 16th, 1903 ...190-.

DEAR SIR: Below please find movements of N Y C car number 41278 from C. H. EWINGS, Car Acc't.

From	Train.	Date.	Time.	To	L. or E.	Date.	Time.	Con.
N. Y. Central		4/19		Mich. Central		4/19		
Mich. Central		5/10		L. S. & M. S.		5/10		
L. S. & M. S.		6/6		Vandalia		6/6		
Vandalia		6/13		L. S. & M. S.		6/13		
L. S. & M. S.		6/24		Pere Marquette		6/24		
Pere Marquette		7/16		Mich. Central		7/16		
Mich. Central		7/18		Pere Marquette		7/18		
Pere Marquette		7/20		Mich. Central		7/20		
Mich. Central		9/21		Penn. Company		9/21		
Penn. Company		10/17		L. S. & M. S.		10/17		
L. S. & M. S.		10/31		Pitts. & Lake Erie		10/31		
P. & Lake Erie		12/8		Penn. R. R.		12/8		
Penn. R. R.		12/9		Penn. Company		12/9		
Penn. Company		12/12		Erie		12/12		
Erie		12/17		Clev., Cinn., Chic. & St. L.		12/17		

New York Central & Hudson River Railroad Co.

NEW YORK, January 16th, 1903. 190-.

DEAR SIR: Below please find movements of N Y C car number 41038 from C. H. EWINGS, Car Acc't.

From	Train.	Date.	Time.	To	L. or E.	Date.	Time.	Con.
N. Y. Central		4/28		L. S. & M. S.		4/28		
L. S. & M. S.		5/8		Lake Erie & West		5/8		
L. E. & Western		5/20		L. S. & M. S.		5/20		
L. S. & M. S.		6/2		Grand Trunk		6/2		
Grand Trunk		6/19		Mich. Central		6/19		
Mich. Central		7/26		Chic., Milw. & St. P.		7/26		
Chic., Milw. & St. P.		7/29		Mich. Central		7/29		
Mich. Central		8/26		Chic. Junction		8/26		
Chic. Junction		8/31		Mich. Central		8/31		
Mich. Central		10/10		Chic., Rock I. & Pac.		10/10		
C. R. I. & Pac.		10/14		Missouri Pac.		10/14		
Mo. Pac.		10/20		C. R. I. & Pac.		10/20		
C. R. I. & Pac.		11/27		Chicago, Peoria & West.		11/27		
Chicago, Peoria & West.		11/29		Chic., R. I. & Pac.		11/29		
C. R. I. & Pac.		12/1		Ind., Ill. & Iowa		12/1		
I. I. & Iowa		12/2		N. Y., Chic. & St. L.		12/2		
N. Y. C. & St. L.		12/5		Lehigh Valley		12/5		
Cent. of N. J.		1/2		Penn. Railroad		1/2		
Lehigh Valley		12/7		Cent. of New Jersey		12/7		
Penn. R. R.		1/9		Washington South		1/9		

149 New York Central & Hudson River Railroad Co.

NEW YORK, Jan. 16th, 1903.

DEAR SIR: Below please find movements of N Y C car number 59578 from C. H. EWINGS, Car Acc't.

From	Train.	Date.	Time.	To	L. or E.	Date.	Time.	Con.
N. Y. Central.....		4/2		L. S. & M. S		4/2		
L. S. & M. S		4/17		Lake Erie & West ..		4/17		
L. E. & Western....		5/8		Cin., Ham. & Dayton.		5/8		
Cin.,Ham. & Dayton.		5/20		L. S. & M. S.....		5/20		
L. S. & M. S.....		5/23		Mich. Central		5/23		
Mich. Central.....		6/4		Erie		6/4		
Erie		6/15		Mich. Central		6/15		
Mich. Central.....		8/20		Tor. Ham. & Buffalo.		8/20		
Tor. Ham. & Buffalo.		8/21		Mich. Central.		8/21		
Mich. Central... ...		9/15		Chic. & Alton.		9/15		
Chic. & Alton		9/30		L. S. & M. S.....		9/30		
L. S. & M. S.....		10/12		Atch., Top. & S. Fe..		10/12		
Atch., Top. & S. Fe..		10/15		Ill. Northern		10/15		
Ill. Northern		10/19		Atch., Top. & S. Fe..		10/19		
Atch., Top. & S. Fe..		10/23		L. S. & M. S		10/23		
L. S. & M. S		10/31		Del. Lack. & Western.		10/31		
Del., Lack. & Western		11/28		Mich. Central		11/28		
Mich. Central.....		12/26		L. S. & M. S		12/26		
L. S. & M. S.....		1/1		Penn. R. R.....		1/1		

New York Central & Hudson River Railroad Co.

NEW YORK, Jan. 16th, 1903.

DEAR SIR: Below please find movements of N Y C car number 63158 from C. H. EWINGS, Car Acc't.

From	Train.	Date.	Time.	To	L. or E.	Date.	Time.	Con.
N. Y. Central.....		6/12		L. S. & M. S.....		6/12		
L. S. & M. S.....		7/11		Ohio Cent. lines.....		7/11		
Ohio Cen. lines.....		7/18		L. S. & M. S		7/18		
L. S. & M. S.....		8/18		Pere Marquette.....		8/18		
Pere Marquette.....		9/8		L. S. & M. S.....		9/8		
L. S. & M. S.....		9/18		Wabash		9/18		
Wabash		9/28		L. S. & M. S....		9/28		
L. S. & M. S.....		10/2		Chic., Mil. & St. P...		10/2		
Chic., Mil. & St. P..		10/5		Union Pacific.....		10/5		
Union Pacific.....		10/11		Southern Pacific.....		10/11		

150 New York Central & Hudson River Railroad Co.

NEW YORK, Jan. 16th, 1903.

DEAR SIR: Below please find movements of N Y C car number 18236 from C. H. EWINGS, Car Acc't.

From	Train.	Date.	Time.	To	L. or E.	Date.	Time.	Con.
N. Y. Central.....		3/5		Mich. Central.		3/5		
Mich. Central.....		3/6		Pere Marquette.. ...		3/6		
Pere Marquette.....		4/2		Mich. Central.....		4/2		
Mich. Central.....		4/10		Chic., Ind. & L'ville..		4/10		
Chic., Ind. & Lou...		5/3		Elgin, Jol. & Eastern.		5/8		
Elgin, Jol. & Eastern.		5/8		L. S. & M. S.....		5/8		
L. S. & M. S..... .		5/13		Wheeling & L. Erie..		5/13		
Wheeling & L. Erie..		6/6		L. S. & M. S.....		6/6		
L. S. & M. S		6/9		Ill. Central.....		6/9		
Ill. Central.....		7/2		L. S. & M. S		7/2		
L. S. & M. S.....		8-21		Cin., Ham. & Dayton.		8/21		
Cin., Ham. & Dayton.		8/24		Louisvl. & N'shville		8/24		
Louisvl. & N'shville.		9/24		Penn. Company.....		9/24		
Penn. Company....		11/10		Lake Erie & Western.		11/10		
Lake Erie & Western.		11/25		Penn. Company.....		11/25		
Penn. Company.....		12/20		Clev., Cinn., Chic., & St. L.		12/20		

New York Central & Hudson River Railroad Co.

NEW YORK, Jan. 16th, 1903.

DEAR SIR: Below please find movements of N Y C car number 63123 from C. H. EWINGS, Car Acc't.

From	Train.	Date.	Time.	To	L. or E.	Date.	Time.	Con.
N. Y. Central		6/15		L. S. & M. S.		6/15		
L. S. & M. S.		6/18		Penn. Railroad		6/18		
Penn. Railroad		6/22		L. S. & M. S.		6/22		
L. S. & M. S.		6/25		Baltimore & Ohio		6/25		
Baltimore & Ohio		7/17		L. S. & M. S.		7/17		
L. S. & M. S.		8/1		Penn. Company		8/1		
Penn. Company		8/6		L. S. & M. S.		8/6		
L. S. & M. S.		8/14		Wheeling & L. E.		8/14		
Wheeling & Lake E.		9/5		Mich. Central		9/5		
Mich. Central		9/19		Wis. Central		9/19		
Wis. Central		9/21		Mich. Central		9/21		
Mich. Central		9/26		Chic. Ter. & Trans.		9/26		
Chic. Ter. & Trans.		10/7		Chicago Be[illegible]		10/7		
Chic. Belt		10/8		N. Y., Chic. & St. L.		10/8		
N. Y., Chic. & St. L.		10/10		L. S. & M. S.		10/10		
L. S. & M. S.		11/[illegible]		Chic., Bur. & Quin.		11/5		
Chic., Bur. & Quin.		11/[illegible]		[illegible]		11/20		
Chic. Belt		11/[illegible]		Mich. Central		11/20		
Mich. Central		12/8		Detroit, Tol. & Mil.		12/8		
Detroit, Tol. & Mil.		12/[illegible]		Penn. Company		12/21		

151 New York Central & Hudson River Railroad Co.

NEW YORK, Jan. 16th, 1903.

DEAR SIR: Below please find movements of N Y C car number 63176 from C. H. EWINGS, Car Acc't.

From	Train.	Date.	Time.	To	L. or E.	Date.	Time.	Con.
N. Y. Central		2/11		L. S. & M. S.		2/11		
L. S. & M. S.		2/14		C., C., C. & St. L.		2/14		
C., C., C. & St. L.		2/17		Ohio Central lines		2/17		
Ohio Central lines		2/22		Chesapeake & Ohio		2/22		
Chesap. & Ohio		3/27		C., C., C. & St. L.		3/27		
C., C., C. & St. L.		3/29		Ill. Central		3/29		
Ill. Central		4/11		Chic. Ter. & Trans.		4/11		
Chic. Ter. & Trans.		4/12		Chic. Belt		4/12		
Chic. Belt		4/30		L. S. & M. S.		4/30		
L. S. & M. S.		5/16		Chic. Junction		5/16		
Chic. Junction		5/20		L. S. & M. S.		5/20		
L. S. & M. S.		5/24		Lehigh Valley		5/24		
Lehigh Valley		5/28		N. Y., N. H. & H.		5/28		
N. Y., N. H. & H.		5/29		Boston & Maine		5/29		
Boston & Maine		6/21		N. Y., N. H. & H.		6/21		
N. Y., N. H. & H.		7/6		Lehigh Valley		7/6		
Lehigh Valley		7/7		Ironton R. R.		7/7		
Ironton R. R.		7/8		Lehigh Valley		7/8		
Lehigh Valley		7/11		Mich. Central		7/11		
Mich. Central		9/12		Lehigh Valley		9/12		
Lehigh Valley		9/21		Norfolk & Western		9/21		
Norfolk & Western		10/31		C., C., C. & St. L.		10/31		
C., C., C. & St. L.		11/2		Grand Rap. & Ind.		11/2		
Grand Rap. & Ind.		11/15		Dul., S. Shore & Atl.		11/15		
Dul., S. Shore & Atl.		11/17		M., St. P. & S. Ste. M.		11/17		
M., St. P. & S. Ste. M.		11/20		Dul., S. Shore & Atl.		11/20		
Dul., S. Shore & Atl.		12/3		Grand Rap. & Ind.		12/3		
Grand Rap. & Ind.		12/18		Penn. Company		12/18		

152 New York Central & Hudson River Railroad Co.

NEW YORK, January 6th, '03.

DEAR SIR: Below please find movements of N Y C car number 64431 from
C. H. EWINGS, Car Acc't.

From	Train.	Date.	Time.	To	L. or E.	Date.	Time.	Con.
N. Y. Central		6/27		L. S. & M. S		6/27		
L. S. & M. S		7/8		Chic., Ind. & Louis.		7/8		
Chic., Ind. & Louis.		7/14		Mich. Central		7/14		
Mich. Central		7/30		Det., Tol. & Mil		7/30		
Det., Tol. & Mil		8/5		L. S. & M. S		8/5		
L. S. & M. S		8/18		Penn. R. R		8/18		
Penn. R. R		9/7		N. Y., N. H. & H		9/7		
N. Y., N. H. & H		9/9		Boston & Maine		9/9		
Bost. & Maine		9/17		N. Y., N. H. & H		9/17		
N. Y., N. H. & H		9/19		Bost. & Maine		9/19		
Bost. & Maine		9/24		N. Y., N. H. & H		9/24		
N. Y., N. H. & H		10/4		Penn. R. R		10/4		
Penn. R. R		10/22		Penn. Co		10/22		

New York Central & Hudson River Railroad Co.

NEW YORK, February 9, 1903.

DEAR SIR: Below please find movements of N Y C car number 61834 from
C. H. EWINGS, Car Acc't.

Movements.	Date. Month.	Day.	Year.	L. or E.	Time.	Train.	Co
Rec'd from							
From N. Y. C.							
To L. S. & M. S	July	2	1902		M		
From "							
To Elgin, Joliet & Eastern	"	6	"		M		
From " " "							
To Chicago & No. Western	"	8	"		M		
From " " "							
To Union Pacific	"	10	"		M		
From " "							
To Southern Pacific	"	14	"		M		
From " "							
To Union Pacific	Aug.	8	"		M		
From " "							
To Southern Pacific	"	11	"		M		
Del'd to " "							
Rec'd to " "							
From Southern Pacific							
To Atch., Topeka & Santa Fe Coast Line	Dec.	17	"		M		
From " " "							
To Southern Pacific	"	18	"		M		

Louis R. R., Pittsburg and Lake Erie railroad, and such lines as are controlled through ownership by those that I have mentioned.

By COUNSEL: Now, I offer this in evidence for the purpose of going further than the remittitur would require, to wit, showing the proportion of this equipment continuously employed outside of the State, but further restricting it to such; the dividing between the equipment on the one hand used within the State or on the New York Central operated lines, whether in or out of the State or upon the Vanderbilt lines as the witness has just designated without, and upon the other hand the continuous employment and use of it upon lines entirely foreign to the New York Central Company. The last figures show the amount and proportion entirely off all these lines that I have named, as well as entirely outside of the State.

By Mr. MERRILL:

Q. Mr. Meeder, are you prepared to swear that any car or percentage of the cars and locomotives mentioned in that statement were continuously and also exclusively used without New York State?

A. No, sir, I am not prepared to swear to the number so employed, but, so far as locomotives are concerned, I think comparatively few were so employed without the State.

Q. Now, Mr. Meeder, the remittitur calls for two concurrent conditions—one that this rolling stock shall be continuously employed without the State and the other is that it shall be exclusively
133 employed without the State owned by this corporation, and I say it is incumbent upon this corporation to show to the comptroller how much, if any, of that rolling stock is not only continuously but exclusively employed without the State, and that no other evidence is competent.

Same excluded; exception taken.

By COUNSEL: I have here a list of number of car movements, as they are termed—that is, a showing of the individual cars by their number as they pass back and forth from one company to another, which I desire to have identified.

Objected to by Mr. Merrill, on the ground that it is incompetent, immaterial and irrelevant; that it doesn't show that those cars were exclusively and continuously employed without the State. Received as Exhibit C for identification.

By COUNSEL:

Q. Examine the paper marked Exhibit C for identification, Mr. Meeder, and state whether it was prepared under your direction and supervision?

A. Yes, sir, it was so prepared.

Q. And what have you to say as to its being correctly transcribed from the records of the movements of the cars?

A. I believe it to be a correct transcript from the records.

Q. What it means is that freight car number 27941 passed from

the possession of one railroad company to another railroad and at the dates named and at the dates specified in the statement?

A. Yes, sir.

Same offered in evidence. I offer to show by this that car number 27941 went from the New York Central and Hudson River railroad to the Michigan Central railroad on June 12th, 1902;

134 that it passed from the possession of the Michigan Central railroad to the Chicago, Rock Island and Pacific railroad on June 14th, 1902, and from that date on passed from hand to hand from one company to another at the dates shown until November 25th, 1902, when it was still in the hands of the Chicago, Rock Island and Pacific, during which, more than five months, it was never in the possession of the New York Central and Hudson River Railroad Company or of any of the so-called Vanderbilt or New York Central lines.

Mr. MERRILL: We object to it on the ground that it does not satisfy the two concurrent conditions laid down in the remittitur, and furthermore that the whole transaction transpired after the close of the taxing year ending October 31st, 1900.

Same excluded.

By COUNSEL:

Q. Having in mind, Mr. Meeder, the history of the movement of car number 27941, as shown in the Exhibit C for identification, to which your attention has been called, what have you to say as to whether that is or is not fairly illustrative of the movement of vast numbers of the freight cars of the New York Central and Hudson River Railroad Company during the year ending October 31st, 1900, as regards their movement on other than so-called Vanderbilt lines?

A. I believe that this illustration of the movement of car 27941, while showing dates subsequent to October 31st, 1900, is an illustration of what did occur within the year ending October 31st, 1900, as regards numerous individual cars belonging to the New York Central and Hudson River Railroad Company; that is to say, that

135 the records of the car accountant would show the delivery of New York Central and Hudson River Railroad Company's cars to other lines outside of New York State, and that they were not returned to the line of the New York Central for a considerable period of time.

Q. And what have you to say, Mr. Meeder, as to whether or not the mileage of freight cars outside New York State on roads other than Vanderbilt lines, 176,511,181, and the per centum, 32.68, is based essentially and largely upon car movements within that year, of which those shown upon Exhibit C for identification is illustrative?

A. To the best of my knowledge and belief, this total is mainly made up of individual car movements, such as illustrated in the table for number 27941.

153 New York Central & Hudson River Railroad Co.

NEW YORK, February 9, 1903.

DEAR SIR: Below please find movements of N Y C car number 14035 from
C. H. EWINGS, Car Acc't.

Movements.	Date. Month.	Day.	Year.	L. or E.	Time.	Train.	Con.
Rec'd from					M		
N. Y. C.					M		
To L. S. & M. S.....	Dec.	20	1901		M		
From " "					M		
To Cleve., Cin. Chic. & St. L.	"	23	"		M		
From " " "					M		
To Norfolk & Western.....	"	28	"		M		
From " "					M		
To Cleve. Cin. Chic. & St. L.	Jan.	8	1902		M		
From " " " .					M		
To Norfolk & Western.....	"	12	"		M		
From " "					M		
To Chesapeake & Ohio....	"	14	"		M		
From " "					M		
To Southern.....	"	20	"		M		
Del'd to					M		
Rec'd from					M		
From Southern					M		
To Washington Southern..	Feb.	20	"		M		
From " " ..					M		
To Southern.....	Mar.	15	"		M		
From "					M		
To Baltimore & Ohio.....	"	24	"		M		
From " "					M		
To Southern	Apr.	21	"		M		
From "					M		
To Baltimore & Ohio.....	July	9	"		M		
From " "					M		
To Southern	"	11	"		M		
From "					M		
To Washington Southern..	Sept.	3	"		M		
Del'd to							
Rec'd from					M		
From Wash. Southern.....					M		
To Southern.....	Oct.	26	"		M		
From "					M		
To Chesapeake & Ohio....	Nov.	7	"		M		
From " "					M		
To Penn. R. R.....	Dec.	3	"		M		
From "					M		
To Chesapeake & Ohio....	Jan.	4	1903		M		
From " "					M		
To					M		
From.....					M		
To					M		
From.....					M		
To					M		
Del'd to							

154 New York Central & Hudson River Railroad Co.

NEW YORK, February 9, 1903.

DEAR SIR: Below please find movements of N Y C car number 27941 from
C. H. EWINGS, Car Acc't.

Movements.	Date. Month.	Day.	Year.	L. or E.	Time.	Train.	Con.
Rec'd from					M		
From N. Y. C.					M		
To Mich. Central	June	12	1902		M		
From "					M		
To Chic. R. Island & Pac.	"	14	"		M		
From " "					M		
To Colo. Midland	"	18	"		M		
From " "					M		
To Rio Grande Western	"	20	"		M		
From " "					M		
To Southern Pacific	"	21	"		M		
From " "					M		
To Union Pacific	Aug.	8	"		M		
From " "					M		
To Southern Pacific	Sept.	16	"		M		
Del'd to							
Rec'd from					M		
From Southern Pacific					M		
To Union Pacific	Sept.	22	1902		M		
From " "					M		
To Rio Grande Western	"	23	"		M		
From " "					M		
To Colo. Midland	Oct.	7	"		M		
From " "					M		
To Denver & Rio Grande	"	31	"		M		
From " " "					M		
To Colo. Midland	Nov.	5	"		M		
From " "					M		
To Chic., R. Island & Pac.	"	25	"		M		
From " " "					M		
To					M		
Del'd to							

155 Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK upon the Relation of The New York Central and Hudson River Railroad Company, Relator,

against

NATHAN L. MILLER, as Comptroller of the State of New York, Respondent.

Stipulation under Sections 3301 and 1353 of the Code of Civil Procedure.

It is hereby stipulated, under section 3301 of the Code of Civil Procedure, that the foregoing are true copies of the petition for writ of certiorari, order of issuance of writ, writ, and return to writ and

certification thereof, as required by section 1353 of the Codes of Civil Procedure, is hereby waived.

Dated New York, July 22, 1903.

IRA A. PLACE,
Attorney for Relator.
JOHN CUNNEEN,
Attorney General, Attorney for Respondent.

156 Order of Appellate Division.

At a term of the appellate division of the supreme court of the State of New York, held in and for the third judicial department of said State, at the appellate division court room, in the city of Albany, commencing on the 10th day of November, 1903.

Present: Hon. Charles E. Parker, presiding justice. Walter Lloyd Smith, Emory A. Chase, Alden Chester, James H. Houghton, associate justices.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of the New York Central and Hudson River Railroad Company, Relator,

vs.

NATHAN L. MILLER, as Comptroller of the State of New York, Defendant.

This cause having been brought on for argument and having been heard upon the writ of certiorari and return and the papers upon which the writ was granted and having been argued by Ira A. Place, Esq., of counsel for the relator, by William H. Wood, Esq., deputy attorney general, of counsel for the defendant,

Now, on motion of John Cunneen, attorney general, attorney for the defendant,

157 It is ordered, that the determination of the comptroller be and the same hereby is unanimously confirmed, with fifty dollars costs and disbursements.

[L. S.] JOSEPH H. HOLLANDS, Clerk.

(A copy.)

JOSEPH H. HOLLANDS, Clerk.

Opinion of Appellate Division.

Argued at November Term, 1903; Decided at November Term, 1903.

Appellate Division, Third Department.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* The New York Central and Hudson River Railroad Company, Relator,
vs.
NATHAN L. MILLER, as Comptroller of the State of New York, Respondent.
} Opinion for Affirmance.

Writ of certiorari issued June 13, 1903, to review the determination of the comptroller made April 23, 1903, on remittitur from the court of appeals to him for determination as to whether any
158 portion of the relator's rolling stock was exempt from the annual franchise tax imposed for the year ending October 31, 1900.

Ira A. Place, for relator.

John Cunneen, attorney-general (William H. Wood, of counsel), for respondent.

HOUGHTON, J.:

The original determination of the comptroller imposing the franchise tax under section 182 of the tax law, upon the relator for the year ending October 31, 1900, was reviewed by this court and a readjustment ordered. (People *ex rel.* N. Y. C. & H. R. R. Co. *vs.* Knight, 75 App. Div., 169.) On that readjustment it was held that the relator was entitled to be credited on the value of its rolling stock with the sum of $15,230,186.06, which was the proportionate value of the average amount of its rolling stock employed outside the State during the year.

Upon a review of our decision by the court of appeals, that court decided that the relator could not be credited with this average amount of its rolling stock employed outside the State during the year, but only such of it as was used exclusively and continuously outside, and remitted the proceeding to the comptroller for further hearing upon that subject. (People *ex rel.* N. Y. C. & H. R. R. Co. *vs.* Knight, 173 N. Y., 255.)

That hearing has been had and the comptroller has found that none of the rolling stock was used continuously and exclusively throughout the year outside the State of New York, and has deducted nothing for the value of cars and equipment temporarily or on an average employed outside.

The relator insists that the comptroller has misapprehended the

decision of the court of appeals. We do not think so. The
159 decision is very [illegible]. There are two opinions, one discussing all the questions and upholding the credit directed to be given for the value of the average amount of cars employed by the relator outside the State during the year. The majority of the court, however, refused to concur in the propriety of this credit, and the matter was, therefore, remitted to the comptroller for further proof upon the subject of continuous and exclusive employment by the relator of rolling stock outside the State.

The relator failed to establish upon such hearing that it employed any of its rolling stock in this manner, and the comptroller has properly found that none was so employed, and it remains only for us to confirm his determination.

It would be neither profitable nor proper for us to enter upon a discussion of a question so pointedly decided, or even to point out the logical effect of the application of the rule to the imposition of the franchise tax upon foreign corporations employing in a similar manner a portion of their capital within the State.

The determination of the comptroller must be confirmed, with costs.

160 Relator's Notice of Appeal to Court of Appeals.

Supreme Court, County of Albany.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of The New York Central and Hudson River Railroad Company, Relator, *against* NATHAN L. MILLER, as Comptroller of the State of New York, Respondent.	Notice of Appeal to Court of Appeals. Proceeding for 1900.

SIRS: Please take notice that the relator in the above-entitled action hereby appeals to the court of appeals from the order of the appellate division of the supreme court, third department, entered herein in the office of the clerk of the county of Albany, on the 10th day of December, 1903, and from each and every part of said order.

Dated New York, December 14, 1903.

Yours, &c.,
IRA A. PLACE,
Attorney for Relator, Room 417, Grand Central Station,
Borough of Manhattan, New York City, N. Y.

To John Cunneen, Esq., attorney for respondent, capitol, Albany, N. Y., and clerk of the county of Albany, Albany, N. Y.

161 Stipulation.

In the Court of Appeals.

THE PEOPLE OF THE STATE OF NEW YORK on the Relation of The New York Central and Hudson River Railroad Company, Appellant, *against* NATHAN L. MILLER, as Comptroller of the State of New York, Respondent.	Stipulation under Sections 3301 and 1353 of the Code of Civil Procedure. Proceedings for 1900.

It is hereby stipulated, under section 3301 of the Code of Civil Procedure, that the foregoing are true copies of the notice of appeal, the order appealed from and the papers upon which the court below acted in making said order, on file in the office of the clerk of Albany county, and certification thereof, as required by section 1353 of the Code of Civil Procedure, is hereby waived.

Dated borough of Manhattan, New York city, December 21, 1903.

IRA A. PLACE,
Attorney for Appellant.
JOHN CUNNEEN,
Attorney General, Attorney for Respondent.

162 Court of Appeals.

STATE OF NEW YORK, *ss.*:

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the 23rd day of February, in the year of our Lord one thousand nine hundred and four, before the judges of said court.

Witness, the Hon. Alton B. Parker, chief judge presiding.

W. H. SHANKLAND, Clerk.

Remittitur, February 24th, 1904.

Albany Special Term, M'ch 12, 1904.

Read on motion and ordered filed in Albany county clerk's office.

JOHN FRANEY, Clerk.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* The New York Central and Hudson River Railroad Company, Appellant, *ag'st* NATHAN L. MILLER, as Comptroller, etc., Respondent.	Proceeding for 1900.

Be it remembered, that on the 28th day of December in the year of our Lord one thousand nine hundred and three The New York

Central and Hudson River Railroad Company the appellant in this proceeding came here into the court of appeals, by Ira A. Place, its attorney, and filed in the said court a notice of appeal and re-
163 turn thereto from the order of the appellate division of the supreme court in and for the third judicial department. And Nathan L. Miller, as comptroller etc. the respondent in said proceeding, afterwards appeared in said court of appeals by John Cunneen, attorney general, his attorney. Which said notice of appeal and the return thereto filed as aforesaid, are hereunto annexed.

Whereupon, the said court of appeals having heard this cause argued by Mr. Ira A. Place of counsel for the appellant, and by Mr. John Cunneen of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the order of the appellate division of the supreme court appealed from herein be, and the same hereby is affirmed with costs relator having contended herein that if the statute purported to authorize the tax here in question said statute was violative of the Constitution of the United States in the particular following. The court hold and adjudge that the statute (1) does not offend against the commerce clause (article 1 of section 8) of the Federal Constitution (2) does not contravene the provisions of article 1 section 10 thereof forbidding impairment of the obligations of contracts (3) does not offend against the provision of the fourteenth amendment thereof forbidding the State to deprive any person of property without due process of law.

And it was also further ordered, that the record aforesaid, and the proceedings in this court, be remitted to the said supreme court, there to be proceeded upon according to law.

Therefore, it is considered that the said order be affirmed, with costs etc. etc. as aforesaid.

And hereupon, as well the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid, by
164 them given in the premises, are by the said court of appeals remitted into the supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court before the justices thereof, &c.

W. H. SHANKLAND,
Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
ALBANY, February 24th, 1904.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals, with the papers originally filed therein attached thereto.

[SEAL.] W. H. SHANKLAND, Clerk.

STATE OF NEW YORK, }
County of Albany, Clerk's Office, } ss:

I, John Franey, clerk of the said county, and also clerk of the supreme and county courts, being courts of record held therein, do hereby certify that I have compared the annexed copy remittitur the original thereof, filed in this office on the 16th day of March, 1904, and that the same is a correct transcript therefrom, and of the whole of said original.

In testimony whereof, I have hereunto set my hand and affixed my official seal this 11th day of May, 1904.

[SEAL.] JOHN FRANEY, Clerk.

165 In the Court of Appeals of the State of New York.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* The New York Central and Hudson River Railroad Company, Appellant, *v.* NATHAN L. MILLER, as Comptroller of the State of New York, Respondent. } Actions 1 and 2.

People *ex rel.* N. Y. C. & H. R. R. R. Co. *v.* Miller, 89 App. Div. 127, affirmed.

(Argued February 9, 1904; decided February 23, 1904.)

Appeals from orders of the appellate division of the supreme court in the third judicial department, entered December 10, 1903, which affirmed determinations of the defendant in imposing a tax upon the relator for the years 1900 and 1901 under section 182 of the tax law.

Ira A. Place and Thomas Emery for appellant.

John Cunneen, attorney-general (William H. Wood on the brief), for respondent.

Orders affirmed, with costs, on opinion in People *ex rel.* N. Y. C. & H. R. R. R. Co. *v.* Knight (173 N. Y. 255).

Concur: Parker, Ch. J., Haight, Martin, Vann and Cullen, JJ. Not sitting: Gray, J. Not voting: O'Brien, J.

166 [Endorsed:] In the court of appeals of the State of New York. The People of the State of New York, upon the relation of The New York Central and Hudson River Railroad Company, appellant, *v.* Nathan L. Miller, as comptroller of the State of New York, respondent. Memoranda opinion. Tax of 1900.

167 At a special term of the supreme court of the State of New York held in and for the county of Albany at the city hall in said city, on the 12th day of March, 1904.

Present: Hon. D. Cady Herrick, justice.

Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* NEW YORK Central & Hudson River Railroad Company
vs.
NATHAN L. MILLER, as Comptroller of the State of New York.

The above entitled cause having been taken to the court of appeals from an order of the appellate division of the supreme court, in the third department, entered and filed in the office of the clerk of said appellate division in the city of Albany, N. Y. on December 10, 1903, which order affirmed the determination of the comptroller in auditing and stating the account of the relator for the State franchise tax, based on the value of the capital stock of the relator employed in this State for the year ending October 31, 1900, amounting to $159,000, and adjudged that the defendant recover against the relator the sum of fifty dollars costs and disbursements, and said appeal having been taken from every part of said order and the said court of appeals having rendered judgment in the cause on the 23d day of February, 1904, in all things affirming the judgment of said appellate division further ordering that the record of said
168 cause and that the proceedings in the court of appeals be remitted to the supreme court, to be enforced according to law and also further ordering that the defendant recover of the relator The New York Central & Hudson River Railroad Company, the costs of appeal to said court of appeals, now therefore, on reading and filing the said remittitur, and on motion of John Cunneen, attorney general, attorney for the defendant,

It is ordered and adjudged that the judgment of the court of appeals be and the same hereby is made the judgment of this court, and that the defendant recover of the said relator, The New York Central & Hudson River Railroad Company, the costs and disbursements of this proceeding, to be taxed by the clerk.

D. CADY HERRICK,
Jus. Sup. Ct.

169 Supreme Court, Albany County.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* NEW YORK Central & Hudson River Railroad Company
vs.
NATHAN L. MILLER, as Comptroller of the State of New York.

An order in this action having been made by the appellate division of the supreme court, third department, which order was entered in the office of the clerk of said appellate division in the city of Albany on December 10, 1903, affirming the determination of the

comptroller in auditing and stating the account of the relator for the State franchise tax for the year ending October 31, 1900, at the sum of $159,000, and adjudging that the defendant recover of the relator the sum of fifty dollars costs and disbursements, and an appeal having been taken by the relator from said order to the court of appeals and the said court of appeals having rendered judgment in this cause on the 23d day of February, 1904, in all things affirming the order of said appellate division, and further ordering that the defendant recover from the relator the costs of appeal to said court of appeals, and further ordering that the record in said cause and proceeding in said court of appeals be remitted to the supreme court to be enforced according to law, and the said court of appeals having ordered to be sent to this court its remittitur, by which it appears that the said court of appeals has affirmed said judgment of the appellate division in all things, with costs,
170 and has given judgment accordingly, and this court having by order entered herein on the 16th day of March, 1904, ordered that the said judgment of the court of appeals be made the judgment of this court, with costs and disbursements,

Now therefore, on motion of John Cunneen, attorney general, attorney for defendant,

It is adjudged that the judgment of said court of appeals be and the same hereby is made the judgment of this court, and that the defendant have execution against the relator The New York Central & Hudson River Railroad Company for the sum of $151.70, costs and disbursements.

JOHN FRANEY, Clerk.

171 [Endorsed:] New York supreme court. The People of the State of New York, upon the relation of the New York Central and Hudson River Railroad Company, against Nathan L. Miller, as comptroller of the State of New York. Order and judgment. Tax of 1900.

172 Petition for Writ of Error to the Supreme Court of the State of New York.

In the Supreme Court of the United States.

THE PEOPLE OF THE STATE OF NEW YORK upon the Relation of the New York Central and Hudson River Railroad Company, Plaintiffs in Error,

against

NATHAN L. MILLER, as Comptroller of the State of New York, Defendant in Error.

To the honorable justices of the Supreme Court of the United States:

Come now the said petitioners The People of the State of New York upon the relation of the New York Central and Hudson River

Railroad Company by their attorney, and as and by way of complaint of and against the said Nathan L. Miller, as comptroller of the State of New York, respondent, respectfully show to the court:

That the said relator, The New York Central and Hudson River Railroad Company, was during all of the times mentioned in the record herein and is a domestic corporation of the State of New York, organized under the laws of and domiciled within that State, engaged in the business of a common carrier of persons and property between points respectively within that State, and between points respectively within the respective States of New Jersey and Pennsylvania, and between points in either of the said re-

173 spective States and points in either of the others thereof, and between points in either of said States and points in other States and foreign countries, and between points in respective States other than the above, via and over routes extending through and over portions of one or more of the said respectively named States.

That by provision of the tax law of the State of New York, section 180, the tax or license fee of and for domestic corporation organization and existence is imposed, exacted and paid once for all at the threshold of the vesting of corporate power; section 182 thereof provides imposition of an annual franchise tax for and upon the exercise of domestic corporation franchises to be computed as therein provided upon the basis of the amount of corporate capital employed in said State within the tax year; and, section 184 thereof provides imposition of an additional annual franchise tax to be computed upon the basis of the amount of corporate gross earnings within the tax year.

That during the year ending October 31, 1900, for and in respect of which the tax here in question was imposed and exacted, the said relator carried on its said business of a common carrier of persons and property in and by the operation of engines, cars and trains upon and over its owned and leased lines of railroad and lines of railroad upon and over which it had trackage rights, respectively, within the State of New York, and upon and over leased lines of railroad and lines of railroad upon and over which it had trackage rights, respectively, within the respective States of New Jersey and Pennsylvania, upon all whereof it carried persons and property locally between points within the respective States wherein portions of its operated lines of railroad were situate, and between points in those respective States and points in other States.

174 That in and about the carrying on of said transportation business by the said relator large numbers of its cars, though composed of frequently and constantly changing individual cars, passed into or out of the said respective States of New York, New Jersey and Pennsylvania in such wise that at all times a large average number, to wit, many hundreds of the cars of said relator were continuously situate, employed and operated in the States of New Jersey and Pennsylvania, respectively, upon and over railroads there situate, and in so doing were thus operated in the right of and under

authority of the franchises in that behalf granted by those respective States and subject unto the burdens imposed and regulations prescribed in and by the laws, rules and ordinances of the respective States, and political subdivisions thereof, wherein the said portion of road was situate and the said transportation service performed.

That the major part of the said relator's said transportation business consisted of such transportation by it upon and over portions of its said operated lines of road of so much of through carriage of persons and property starting or consigned from points outside of the respective States of New York, New Jersey and Pennsylvania and destined to points within said respective States, or *vice versa*, and persons and property starting or consigned from points respectively without either of said States, passing en route through some one or more thereof, and destined to points respectively without either thereof.

That inasmuch as the said transportation service thus performed and rendered by the said relator consisted of operations within the said States of New Jersey and Pennsylvania respectively, they consisted of and inhered in the exercise of franchises granted by
175 those States respectively to corporations created by and domiciled within the said States, respectively, which were thus exercised by relator under and in pursuance of contracts of and for leases of, and contracts of and for trackage rights upon and over, railroads there situate, together with the franchise to maintain and operate the same, granted, remised and accorded by the said corporations created by said respective States to the said relator, and exercised and enjoyed by the said relator in and under authority of the rights of its respective lessors and under and in pursuance of and subject unto the burdens imposed and regulations prescribed by the said States of New Jersey and Pennsylvania respectively.

That in and by the exercise and performance of the functions thus employed by the said relator in the respective States of New Jersey and Pennsylvania the only such function which it thus exercised under authority of the State of New York was that of its corporate existence, the tax whereon or wherefor is no part of the tax here in question.

That the said franchises thus exercised by the said relator in the respective States of New Jersey and Pennsylvania in and about and in respect of the there operation of its trains and transportation of persons and property were solely those granted and accorded by and under authority of the said respective States wherein the said operations were carried on and conducted, and were altogether and only subject unto regulations prescribed and promulgated by authority of those respective States and by authority of the United States, and not at all by authority of the State of New York.

176 That if and so far as it was within the province and power of the State, as distinguished from the United States, to impose or exact burdens upon or to prescribe regulations for and concerning the exercise by relator of the said franchises of railroad

maintenance, train operation and transportation of persons and property, the province and power thereof solely inhered in and pertained to the said respective State of New Jersey or Pennsylvania wherein the said respective railroad was situate and the said franchises were exercised, and not in or to the said State of New York.

That in and about the said relator's train operations and transportation of persons and property upon and over its said operated lines of railroad in the said respective States of New York, New Jersey and Pennsylvania, respectively, in obedience to the requirements of the laws of the United States respecting through transportation from one State to another of carload commodities without reloading or breaking of bulk, and otherwise in conformity with the methods generally observed and followed by common carrier railroad transportation companies within the United States, in the time last preceding and within the said tax year, large numbers of relator's cars of various kinds were from day to day transferred and delivered from relator, and its said operated lines of railroad, in the respective States of New York, New Jersey and Pennsylvania, to, and upon the railroads of and operated by, other common carrier railroad transportation companies foreign to and outside of the State of New York, whereby a large average number of relator's cars, consisting of more or less frequently changing individual cars, were continuously and at any and all times out of the State of New York, and out of the
177 possession, custody and use of the said relator, and in the meantime transferred and delivered, more or less frequently from one to another common carrier railroad transportation corporation, and by them employed outside of the State of New York in and about their mutual and respective transportation business, foreign to and entirely dissociated from the business of the said relator, and in such wise as rendered it impossible for the said relator to know, be informed or make proof, what, if any, of the said cars, and the extent to which all or any thereof, were employed in transportation business solely within or domestic to any State, or in transportation business between or among the several States, or between the United States and countries or dominions foreign thereto.

That the capital of the said relator invested and employed in the average number of the cars of the relator in manner aforesaid absent from and employed outside of the State of New York in and during the franchise tax year ending October 31, 1900, was in excess of the sum of $13,405,619.36, which said sum stood in such relation to the meantime total capital of said relator that in and by inclusion thereof as subject unto the franchise tax to be computed upon the basis of relator's capital employed within the State of New York, the said franchise tax was augmented and enlarged in and by the sum of $8,404.54.

That the said comptroller of the State of New York in and about the imposition and laying of the said franchise tax upon and against the said relator to be computed upon the basis of the capital of the said relator employed within the State of New York during the said

tax year, and the said respective courts in and about their respective final orders and judgments of affirmance of the said tax, imposed and sustained the same computed upon the basis of and in-
178 cluding all of the cars of the said relator, the large average numbers whereof were in manner aforesaid absent from and employed in State and interstate and foreign commerce outside of the State of New York.

And the said petitioners further respectfully show unto the court and complain that in the said record and proceedings had in the above entitled action, (taxes of A. D. 1900), and also in the rendition of the final order and judgment in the said cause, in the supreme court of the State of New York, sitting in Albany county, third judicial department, at the appellate division November term thereof, A. D. 1903, to wit: November 10, 1903, as also in the final order and judgment of the court of appeals of the State of New York, to which last mentioned court the said cause was appealed by said petitioners, being the highest court of law and equity in said State, and the highest such court in which a decision could be had in said cause, to wit: on February 23, A. D. 1904, affirming on appeal the said final order and judgment of the supreme court of the State of New York, in the said cause between the said The People of the State of New York upon the relation of The New York Central and Hudson River Railroad Company, petitioners and plaintiffs in error, and the said Nathan L. Miller, as comptroller of the State of New York, respondent, and defendant in error, in each which supreme court and court of appeals, was drawn in question the validity of a statute of said State, and the validity of an authority exercised by the said comptroller under said State, on the grounds that (1) they constituted a burden upon and regulation of commerce among the several States as carried on and conducted by the said relator and were thus repugnant to the commerce clause article 1, section 8, of the Constitution of the United States: (2) they impair the
179 obligations of contracts of and with the said relator and were thus repugnant to article 1, section 10 of the Constitution of the United States; and (3) they deprive the said relator of its property and property rights without due process of law and were thus repugnant to the provisions of the fourteenth amendment of the Constitution of the United States; and the decision, final order and judgment of each thereof, the said supreme court and the said court of appeals, was in favor of such their validity; and that in and by and in pursuance of the said decision, final order and judgment of affirmance and order of mandate and remittitur of the said court of appeals of the State of New York, the record and proceedings in said cause were remitted to and now remain in the said supreme court of the State of New York before the justices thereof; and in pursuance thereof and of the statutes of the State of New York in such case made and provided, thereafter, to wit; on March 16, 1904, final order and judgment was rendered by and entered in the supreme court, in said cause, in obedience to and in conformity with the said

decision, order, judgment and remittitur of the said court of appeals; in all whereof manifest error hath happened to the prejudice and damage of the said relator, The New York Central and Hudson River Railroad Company.

Wherefore, the said The People of the State of New York upon the relation of The New York Central and Hudson River Railroad Company, petitioners and plaintiffs in error, pray for the allowance of a writ of error, and for such other and further orders and process as may cause the record and proceedings aforesaid, with all things concerning the same, to be sent to the Supreme Court of the
180 United States, that upon final hearing hereof the said error be corrected, and such other and further proceeding be ordered and had as according to law should be done.

And your petitioners will ever pray.

Dated, July 25th, 1904.

IRA A. PLACE,

Attorney for Petitioners, Plaintiffs in Error, Room 417 Grand Central Station, Borough of Manhattan, New York City, N. Y.

THOMAS EMERY, Of Counsel.

STATE OF NEW YORK, County of New York, } ss.:

Edward L. Rossiter, being duly sworn, says, that he is an officer of The New York Central and Hudson River Railroad Company, the petitioner herein, to wit, the treasurer thereof; that the foregoing petition is true to the best of his knowledge and belief.

E. L. ROSSITER.

Sworn to before me this 25th day of July, 1904.

JOHN A. MATTISON,
Notary Public, New York County.

Allowed this — day of July, 1904.

——— ———,
Chief Judge of the Court of Appeals of the State of New York.

181 [Endorsed:] United States Supreme Court. The People of the State of New York, upon the relation of The New York Central and Hudson River Railroad Company, plaintiffs in error, against Nathan L. Miller, as comptroller of the State of New York, defendant in error. Petition for writ of error. Tax of 1900. Ira A. Place, attorney for plaintiffs in error, Grand Central station, borough of Manhattan, New York city, N. Y. To John Cunneen, Esq. att'y for def't in error Service of a copy of the within petition is hereby admitted this 3 day of Aug. 1904 John Cunneen att'y gen'l att'y for def't in error S. T. C

182 Copy.

United States Supreme Court.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* THE NEW York Central and Hudson River Railroad Company, Appellant.
against
NATHAN L. MILLER, as Comptroller, etc., Respondent.

Know all men by these presents, that we, The People of the State of New York *ex rel.* The New York Central and Hudson River Railroad Company as principal, and The National Surety Company having an office and principal place of business at # 346 Broadway, borough of Manhattan, city of New York, as surety, are held and firmly bound unto Nathan L. Miller, as comptroller, etc., above-named, in the sum of five hundred ($500.) dollars to be paid to the said Nathan L. Miller, as comptroller, etc., his executors or administrators, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our successors, representatives and assigns, firmly by these presents.

Sealed with our seals and dated the 22nd day of July, 1904.

Whereas, the above-named appellant has sued out a writ of error to the United States Supreme Court to reverse the judgment in the above entitled case by the supreme court of the State of New York.

Now, therefore, the condition of this obligation is such that if the above-named appellant shall prosecute said writ to effect and answer all costs and damages, if it shall fail to make good its plea, then this obligation shall be void, otherwise to remain in full force and virtue.

[L. S.] THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
By W. H. NEWMAN, President.

Attest:
[L. S.] D. W. PARDEE, Secretary.

NATIONAL SURETY COMPANY,
By JOEL RATHBONE, Res. Vice-President.

Attest:
RICHARD J. MORIARTY,
Res. Ass't Secretary.

183 STATE OF NEW YORK, } *ss:*
County of New York, }

On the 26th day of July in the year 1904, before me personally came W. H. Newman to me known who being by me duly sworn did depose and say that he resides in New York; that he is the president of the New York Central and Hudson River Railroad Company, the cor-

oration described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the board of directors of said corporation, and that he signed his name thereto by like authority.

[L. S.] WILLIAM HUTCHINSON,
Notary Public, # 193, New York County.

184 STATE OF NEW YORK, } ss.:
County of New York, }

On this 22nd day of July 1904, before me personally appeared Joel Rathbone res. vice president of the National Surety Company, with whom I am personally acquainted, who being by me duly sworn, said that he resides in the county of New York; that he is the res. vice president of the National Surety Company, the corporation described in and which executed the within instrument; that he knows the corporate seal of said company; that the seal affixed to the within instrument is such corporate seal; that it was affixed by order of the board of directors of said company, and that he signed said instrument as res. vice president of said company by like authority; and that the liabilities of said company do not exceed its assets, as ascertained in the manner provided in section 3, chapter 720 of New York Session Laws of 1893. And the said *Richard J. Moriarty* further said that he is acquainted with Richard J. Moriarty and knows him to be the res. ass't secretary of said company; that the signature of the said Richard J. Moriarty subscribed to the said instrument is in the genuine handwriting of the said Richard J. Moriarty and was thereto subscribed by the like order of the said board of directors and in the presence of him, the said res. vice president.

BELLE F. JAIS,
Notary Public for the County of N. Y., No. 47.

Certificate filed in Kings, Westchester Richmond & Queens counties.

Copy of By-law.

Be it remembered, that at a regular meeting of the board of directors of the National Surety Company, duly called and held on the 6th day of February, 1900, a quorum being present, the following by-law was adopted:

"ARTICLE XIII, SEC. 1. *Signatures Required.*—All bonds, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, shall be signed by the president, the vice-president, the second vice-president, a resident vice-president, or an attorney in fact, and, except when signed by an attorney in fact, shall have the seal of the company affixed thereto, duly attested by the secretary, an assistant secretary or a resident assistant secretary.

"The vice-president, second vice-president and resident vice-presi-
"dents shall each have authority to sign such instruments whether
"the president be absent or incapacitated or not; and the assistant
"secretaries and resident assistant secretaries shall each have au-
"thority to seal and attest such instruments, whether the secretary
"be absent or incapacitated or not. All such instruments executed
"as herein provided shall be as binding upon the company as if
"the same were signed by the president, duly sealed and attested
"by the secretary."

STATE OF NEW YORK, }
County of New York, } ss:

I, Richard J. Moriarty res. ass't secretary of the National Surety Company, have compared the foregoing copy of by-law with the original thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original by-law.

Given under my hand and seal of the company this 22nd day of July 1904.

[L. S.] RICHARD J. MORIARTY,
Res. Ass't Secretary.

185 [Endorsed:] This bond both as to form and sufficiency of surety approved this 28th day of July 1904 Alton B. Parker Ch. J. Approved as to sufficiency Aug. 3 1904 John Cunneen att'y gen'l. S. T. C.

186 Assignment of Errors.

In the Supreme Court of the United States.

THE PEOPLE OF THE STATE OF NEW YORK upon the Relation of the New York Central and Hudson River Railroad Company, Plaintiffs in Error,
against
NATHAN L. MILLER, as Comptroller of the State of New York, Defendant in Error.

To the honorable justices of the Supreme Court of the United States:

Come now the said petitioners, plaintiffs in error, and respectfully show to the court that there is in the said record and proceedings manifest error upon which they will rely in and for their prosecution of the writ of error in the above entitled cause, to-wit:

I. That the said supreme court of the State of New York erred in rendering, and the said court of appeals of the State of New York erred in affirming the final order and judgment wherein and whereby the provisions of section 182 of the tax law of the State of New York, and the authority exercised thereunder by the comptroller of the

State of New York, were held valid in and for franchise taxation of and upon the basis of the capital of the said relator invested and employed in the average number of its passenger, freight, mail, baggage and express cars in obedience to laws of the United
187 States and in due course of business delivered by relator to and employed and used by other common carrier railroad corporations outside of the State of New York in the through carriage of persons and property starting or consigned from the State of New York, New Jersey and Pennsylvania, respectively, and destined to other States, and *vice versa*, and in transportation of persons and property between points in respective States other than and over routes wholly outside of the State of New York, and that such franchise tax did not offend against the commerce clause, article 1, section 8 of the Constitution of the United States.

II. That the said courts, respectively, erred in holding and deciding the said statute valid authority of and for franchise taxation upon the basis of the capital of the said relator invested and employed in the average number of its passenger, freight, baggage, mail and express cars, which in obedience to requirements of the United States statutes, and in the due process of business were transferred and surrendered by said relator to the possession of and used successively and interchangeably by other common carrier railroad corporations outside of the State of New York in the through carrying of persons and property between points in respective States other than New York State, and over routes outside of that State, all under authority of and in the exercise of franchises granted to them respectively by respective States other than the State of New York, and that franchise tax thus computed and imposed did not impair the obligations of the contracts, arising upon, inhering in and pertaining to the grant and use of the respective franchises whereunder the said cars of relator were thus operated and used outside of the State of New York by common carrier railroad corporations
188 foreign to said State of New York, and hence was not repugnant to article 1, section 10 of the Constitution of the United States.

III. That the said courts, respectively, erred in holding and deciding the said statute valid authority of and for franchise taxation upon the basis of the capital of the said relator invested and employed in the average number of its passenger, freight, baggage, mail and express cars, which in the course of transportation business and in obedience to the requirements of the United States statutes, were by the said relator delivered to corporations foreign to the State of New York, and by such foreign corporations employed and used upon railroads operated by them respectively, in respective States other than New York State in the through carrying of persons and property starting or consigned from points in New York, New Jersey or Pennsylvania, and destined to points outside of either thereof, and *vice versa*, and between points foreign to said several States via and over lines of railroad situate without the State of New

York, all in the exercise of and under the authority of franchises granted by the respective States within the said operations were so carried on and conducted, and that such franchise tax did not impair the obligations of the contracts pertaining to such use of relator's cars by other corporations, and hence was not repugnant to article 1, section 10 of the Constitution of the United States.

IV. That the said courts, respectively, erred in holding and deciding the said statute valid authority of and for and the exercise thereunder of said authority the valid imposition of franchise taxation in and by the State of New York upon the basis of the
189 capital of relator invested and employed in the average number of its cars which, in obedience to the requirements of the statutes of the United States, were delivered by relator to transportation corporations foreign to the State of New York, and operated and used by them wholly within States other than New York State, under authority of, and in the exercise of franchises granted by such other States, respectively, to corporations created by them, and that the said statute and the said tax imposed under its authority, did not operate to deprive relator of its property or property rights without due process of law, and hence did not contravene the provisions of the fourteenth amendment to the Constitution of the United States.

V. That the said courts, respectively, erred in holding and deciding that franchise taxation prescribed by, and imposed by the said comptroller of the State of New York under the supposed authority of, said statute, upon the basis of relator's capital invested in the average number of its cars by it operated and used in the States of New Jersey and Pennsylvania, respectively, in the transportation of persons and property between points within either of the said respective States, and between points within and points without either thereof, and between points of starting or shipment and points of destination without via and over routes in part within the said respective States, all under authority of and in the exercise of franchises granted by those States, respectively, to corporations created thereby and domiciled therein, and by the latter leased to the said relator, did not burden or regulate interstate or foreign commerce, and hence did not offend against or contravene the provisions of the commerce clause, article 1, section 8 of the
190 Constitution of the United States; and did not impair the obligations of contracts arising upon or inhering such obedience to the commerce laws of the United States, and therein did not contravene article 1, section 10 of the Constitution of the United States.

VI. That the said courts, respectively, erred in holding and deciding the said statute valid authority of and for franchise taxation in and by the State of New York upon the basis of the capital of relator invested and employed in the average number of its cars operated and used by it in the States of New Jersey and Pennsylvania in the exercise of franchises granted by those States, respect-

ively, and leased or remised by the grantees thereof to the said relator, and exercised by it in the carrying of commerce between points respectively within, and between points within and points without those respective States, and that therein and thereby the said statute did not impair the obligations or contracts pertaining to interstate and foreign commerce, and hence did not offend against the provisions of article 1, section 10 of the Constitution of the United States.

VII. That the said courts, respectively, erred in holding and deciding that franchise taxation imposed by the said comptroller of the State of New York under the supposed authority of said statute, upon the basis of the capital of said relator invested in the average number of its cars by it operated and used in the States of New Jersey and Pennsylvania, respectively, in the exercise of franchises granted by those States, respectively, to corporations created thereby and domiciled therein, and by them leased to relator and by it exercised in commerce local to said respective States, as also
191 in commerce between those respective States and other States, did not impair the obligations of the contracts inhering in, arising upon and pertaining to the grant and use of the franchises granted by the said respective States, within their domain, respectively, and hence did not therein offend against the provisions of article 1, section 10 of the Constitution of the United States.

VIII. That the said courts, respectively, erred in holding and deciding the said statute valid authority of and for franchise taxation upon the basis of the capital of the said relator invested and employed in the average number of its cars used wholly outside of the State of New York, in the operation of railroads situate in other States, owned by corporations created by and domiciled within such other respective States, and leased to and operated by the said relator under authority of the franchises of its said respective lessors, granted to them by the said States, respectively, and that such franchise tax did not impair the obligations of the said contracts of lease, and hence was not therein repugnant to article 1, section 10 of the Constitution of the United States.

IX. That the said courts, respectively, erred in holding and deciding the said statute valid authority of and for and the exercise thereunder of said authority the valid imposition of franchise taxation upon the basis of the capital of the said relator invested and employed in the average number of its passenger, freight, baggage, mail and express cars employed and used by relator in the States of New Jersey and Pennsylvania, respectively, upon lines of railroad situate in and built and owned by corporations charte-d by and domiciled in said respective States, and leased by such corporations to and operated by the said relator, in the carrying of State and interstate commerce under and subject unto the franchise granted and regulation prescribed by such respective State wherein the said road is situate, and that such franchise tax did not transcend the territory and power of the jurisdiction of the State of New

York and of its said comptroller and did not deprive relator of its property or property rights without due process of law, and hence did not therein contravene the fourteenth amendment of the Constitution of the United States.

192 X. That the said courts, respectively, erred in holding and deciding the said statute of the State of New York to be valid authority for, and the said authority of the comptroller of the State of New York exercised thereunder to constitute valid imposition of, the said franchise tax imposed and computed upon the basis of the capital of the said relator invested and employed in the average number of its cars, which, having in obedience to the requirements of the laws of the United States passed out of the State of New York and out of the possession, custody and control of the said relator, were operated and used by railroad corporations created by other States upon their railroads there situate, under authority of franchises granted by such other States, respectively, in common carrier transportation local to said respective States and between those and other States, and that such franchise tax thus computed and imposed did not constitute a burden upon or regulation of commerce among the several States, and did not impair the obligations of the contracts under which in obedience to the laws of the United States the said relator transferred and surrendered, and the said respective foreign corporations in turn directly or remotely acquired possession and custody of and used the said cars of said relator, and did not impair the obligations of the contracts inhering in, arising upon and incident to the grant and use in such other States of the franchises granted by them, respectively, and did not derogate from the diginity of such other States or otherwise transcend the territory or power of the jurisdiction of the State of New York or of its said comptroller, and hence that the said franchise tax thus computed and imposed did not offend against and was not violative of or repugnant to either article 1, section 8, or article 1, section 10 or the fourteenth amendment of the Constitution of the United States.

193 XI. That the said courts, respectively, erred in holding and deciding the said statute of the State of New York to be valid authority for, and the said authority of the comptroller of the State of New York exercised thereunder to constitute valid imposition of the said franchise tax computed and imposed upon the basis of the capital of the said relator invested and employed in the average number of its cars operated and used in the States of New Jersey and Pennsylvania, respectively, upon lines of railroad situate therein, built, maintained and operated under authority of franchises granted by those respective States to corporations created thereby, and domiciled therein, and under leases or grants of trackage rights of railroad and accompanying franchise demised or let by the said owning corporations to the said relator, and thus operated and used in and about common carrier transportation local to the said States of New Jersey and Pennsylvania, respectively, and between those respective States and other States of the United States and dominions

foreign to the United States, and that such franchise tax thus computed and imposed did not constitute a burden upon or regulation of commerce among the several States or foreign commerce, or commerce within and domestic to such respective State, and did not impair the obligations of the contracts inhering in, arising upon and incident to the grant and use in such respective States of New Jersey and Pennsylvania of the franchises granted by them respectively, or of the contracts of lease and agreements of and for trackage rights whereby and whereunder the said owning corporations granted, demised and let the said property and property rights and franchises to relator and relator thus operated in the said respective States under authority thereof and of said franchises, and did not derogate
194 from the dignity of such respective State or thus or otherwise transcend the territory or power of the jurisdiction of the State of New York or of its said comptroller, and hence that the said franchise tax thus computed and imposed did not contravene or offend against and was not violative of or repugnant to either article 1, section 8, or article 1, section 10, or the fourteenth amendment of the Constitution of the United States.

XII. That the said courts, respectively, erred in so holding and deciding as therein and thereby to uphold and sustain the validity of the said statutory provisions and of the authority of the said comptroller of the State of New York exercised thereunder in the said computation and imposition of the said franchise tax as not constituting a burden upon or regulation of commerce domestic to and within States other than the State of New York, as not constituting a burden upon or regulation of commerce among the several States or with foreign countries, as not impairing the obligations of contracts arising upon and pertaining to commerce within and domestic to States other than the State of New York, as not impairing the obligations of contracts arising upon or pertaining to commerce among the several States and with foreign countries, as not impairing the obligations of contracts arising upon and pertaining to the grant of franchises by and the exercise and use thereof within States other than the State of New York, as not derogatory to the dignity of a sister State, as not transcending the territory or power of the jurisdiction of the State of New York or of its said comptroller, and as not depriving the said relator of its property or property rights without due process of law, and hence denying to the said relator the relief, order and decree herein prayed for, and in rendering judgment against them for costs and disbursements in the said cause and proceeding.

195 XIII. That the said courts, respectively, erred in holding and deciding in favor of the validity of the said statute of the State of New York, and the authority of the said comptroller of the State of New York by him exercised thereunder, and consequent thereupon that the said petitioners, plaintiffs in error, were disentitled to have and maintain their said cause and proceeding and to have the relief, order and decree therein and thereby prayed for.

XIV. That the said courts, respectively, erred in holding and deciding in favor of the validity of the said statute of the State of New York and of the said authority exercised thereunder, whereby the said franchise tax was in manner aforesaid computed and imposed, as not repugnant to the Constitution of the United States, and consequent thereupon denying to said relator the relief, order and decree prayed for in its complaint in said cause.

XV. That the said courts, respectively, erred in that their said respective final order and judgment were for and in favor of the said respondent, defendant in error, as comptroller of the State of New York, when the same should have been for and in favor of the said petitioners.

The said petitioners, plaintiffs in error, pray judgment that the said final order and judgment aforesaid be in all things reversed, set aside and held for naught, and the said relator may be restored to all things which it has lost by occasion thereof.

IRA A. PLACE,
Attorney for Plaintiffs in Error.

THOMAS EMERY, Of Counsel.

196 [Endorsed:] United States Supreme Court. The People of the State of New York, upon the relation of The New York Central and Hudson River Railroad Company, plaintiffs in error, against Nathan L. Miller, as comptroller of the State of New York, defendant in error. Assignment of errors. Tax of 1900. Ira A. Place, attorney for plaintiffs in error, Grand Central station, borough of Manhattan, New York city, N. Y. To John Cunneen, Esq., att'y for def't in error. Service of a copy of the within assignment of errors is hereby admitted this 3 day of Aug., 1904. John Cunneen, att'y gen'l, att'y for def't in error. S. T, C.

197 Citation.

UNITED STATES OF AMERICA, *ss:*

To Nathan L. Miller, as comptroller of the State of New York, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the office of the clerk of the supreme court of the State of New York for the county of Albany, wherein The People of the State of New York, upon the relation of The New York Central and Hudson River Railroad Company, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, this 28th day of July, in the year of our Lord one thousand nine hundred and four.

ALTON B. PARKER,
Chief Judge of the Court of Appeals of the
State of New York.

198 [Endorsed:] United States Supreme Court. The People of the State of New York, upon the relation of The New York Central and Hudson River Railroad Company, plaintiffs in error, against Nathan L. Miller, as comptroller of the State of New York, defendant in error. Citation. Tax of 1900. Ira A. Place, attorney for plaintiffs in error, Grand Central station, borough of Manhattan, New York city, N. Y. To John Cunneen, Esq., att'y for def't in error Service of a copy of the within citation with notice of allowance is hereby admitted this 3d day of Aug. 1904 John Cunneen att'y gen'l att'y for def't in error S. T. C.

199 Writ of Error.

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the honorable the judges of the supreme court of the State of New York, possessors of the return and record in the action in which The People of the State of New York upon the relation of The New York Central and Hudson River Railroad Company are plaintiffs and Nathan L. Miller, as comptroller of the State of New York, is defendant, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea in the court of appeals of the State of New York, wherein final judgment upon return from the supreme court of the State of New York was rendered March 16, 1904, that being the highest court of law and equity of the said State in which a decision could be had in the suit or action between The People of the State of New York, upon the relation of The New York Central and Hudson River Railroad Company, plaintiffs in error, and Nathan L. Miller, as comptroller of the State of New York, defendant in error, and which had been remitted to said supreme court for execution and is now before you or some of you in said court; wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of such their validity, a manifest error hath happened to the
200 great damage of the said, The New York Central and Hudson River Railroad Company, as by its complaint appears we being willing that error, if any hath been, should be duly cor-

rected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, in the said Supreme Court, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 2nd day of August, in the year of our Lord one thousand nine hundred and four.

W. S. DOOLITTLE,
Clerk of the United States Circuit Court
for the Northern District of New York,
By C. W. HIGGISON, Deputy.

[SEAL.]

Allowed by—
ALTON B. PARKER,
Chief Judge of the Court of Appeals
of the State of New York.

STATE OF NEW YORK, } ss:
County of Albany, Clerk's Office, }

I, John Franey, clerk of the said county, and also clerk of the supreme and county courts, being courts of record held therein, do hereby certify that I have compared the annexed copies of writ of error; citation; assignment of errors; bond; petition for writ of error; order and judgment; memoranda opinion; papers on appeal from order; opinion; papers on appeal from order with the originals thereof, filed in this office on the 3rd day of August, 1904, and that the same are correct transcripts therefrom, and of the whole of said originals.

In testimony whereof, I have hereunto set my hand and affixed my official seal this 3rd day of August, 1904.

[Seal Albany County, July, 1847.]

JOHN FRANEY, Clerk.

201 [Endorsed:] United States Supreme Court. The People of the State of New York, upon the relation of The New York Central and Hudson River Railroad Company, plaintiffs in error, against Nathan L. Miller, as comptroller of the State of New York, defendant in error. Writ of error. Tax of 1900. Ira A. Place, attorney for plaintiffs in error, Grand Central station, borough of

Manhattan, New York city, N. Y. To John Cunneen, Esq. att'y for def't in error Service of a copy of the within writ of error, with notice of allowance, is hereby admitted this 3 day of Aug. 1904 John Cunneen att'y gen'l att'y for def't in error. S. T. C.

Endorsed on cover: File No. 19,444. New York supreme court. Term No. 81. The People of the State of New York upon the relation of The New York Central & Hudson River Railroad Company, plaintiff in error, *vs.* Nathan L. Miller, as comptroller of the State of New York. Filed August 16", 1904. File No. 19,444.